

Civil Rights *and the*

School-to-Prison Pipeline

in Indiana



A Report of the
Indiana Advisory Committee to the
U.S. Commission on Civil Rights

November 2016

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Indiana Advisory Committee to the
U.S. Commission on Civil Rights**

The Indiana Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the civil rights impact of school discipline and juvenile justice policies in the state, which may lead to high rates of juvenile incarceration in what has become known as the “school to prison pipeline.” The committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Indiana. **The contents of this report are primarily based on testimony the Committee heard during ...**

**Indiana Advisory Committee to the
U.S. Commission on Civil Rights**

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I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

In October 2015, the Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted to take up a proposal to study what is known as the "School-to-Prison Pipeline." The Committee sought to examine the extent to which the application of school disciplinary and juvenile justice policies in the State of Indiana may have a discriminatory impact on students on the basis of race, color, sex, and/or disability,¹—leading to a disproportionate incidence of law enforcement contact and criminal penalties.

A number of federal laws prohibit such discrimination in educational institutions and in the administration of justice, including:

- The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education.²
- The Equal Educational Opportunity Act (EEOA) of 1974 prohibits deliberate segregation in schools on the basis of race, color, and national origin.³
- The Individuals with Disabilities Education Act (IDEA) requires state and local education agencies to "provide a free and appropriate public education to children with disabilities."⁴

¹ National origin was later added as a category for which the Committee sought to study.

² Pub.L. 88-352, 78 Stat. U.S. See Also: Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

³ U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

- The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in any places of public accommodations, including private schools and daycare centers.⁵

Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.”⁶

In this study, the Indiana Advisory Committee sought to examine the extent to which these protections, as currently applied in practice, are sufficient to address concerns regarding the disparate demographics of youth being transferred from the educational system into the criminal justice system in the state.

As part of this effort, the Indiana Advisory Committee to the U.S. Commission on Civil Rights received testimony from government officials and experts through a public web hearing on January 20, 2016. The testimony of these panelists focused on the impact of racial bias, disability, and class bias on discipline disparities at public schools across the nation, and specifically in the state of Indiana. The Committee also heard about alternative policies and practices that could mitigate the use of overly-punitive, exclusionary discipline procedures in schools.

The Committee then organized and hosted an in-person hearing in Indianapolis, IN on February 17, 2016. During this meeting, the Committee heard testimony from community members, advocates, school administrators, educators, legal professionals, and government officials. Testimony included information regarding the ways in which some disciplinary policies and practices may result in a disparate impact on youth of color and youth with disabilities--contributing to the disproportionately high involvement of such youth in the juvenile justice system. The purpose of the meeting was to hear information directly from Indiana residents—particularly those who may be/have been impacted by the school-to-prison pipeline—as well as education officials, scholars, and other experts.

⁴ § 20 U.S.C. 1400 et. Seq. See Also: U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

⁵ U.S. Department of Education, Office of Civil Rights. Americans with Disabilities Act. Available at: <http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html> (last accessed March 2, 2015)

⁶ Cornell University Law Institute, 14th Amendment. Available at: <https://www.law.cornell.edu/constitution/amendmentxiv> (last accessed March 2, 2015)

The following report is the result of the Committee’s review of the aforementioned testimonies, as well as of aggregated state level school disciplinary and juvenile incarceration data. The report is divided into three sections. It first delineates the phenomenon known as the “School-to-Prison Pipeline”, and covers related civil rights concerns. Secondly, it provides an overview of the policies and practices, themes and factors that exacerbate the pipeline according to panelists’ testimony. The report concludes with a series of findings in Indiana, and related recommendations to the Commission which may help to address identified civil rights concerns.

DRAFT

II. BACKGROUND

The American Civil Liberties Union defines the school-to-prison pipeline as a “trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems.”⁷ Although current federal data show a continued, significant decline in juvenile confinement rates in the United States since 1997,⁸ the country maintains the highest rate of juvenile incarceration of any developed nation in the world.⁹ The Indiana Equity Project explains the connection between such high rates of juvenile incarceration and school discipline policies as follows: “Opportunity to learn is one of the strongest predictors of academic achievement; so it is not surprising that removing students from school for disciplinary reasons is associated with negative academic outcomes, such as course failure, academic disengagement, and ultimately dropping out of school...Suspension itself appears to be a risk factor for future contact with the justice system.”¹⁰

The American Civil Liberties Union identifies a number of specific policies and practices thought to contribute to this problem, including:¹¹

- *Zero tolerance policies* that automatically impose harsh penalties such as suspension and expulsion regardless of circumstances. These practices often leave students unsupervised and without constructive activities at home, and exacerbate academic difficulties as students fall behind in their coursework.

⁷ School-to-Prison Pipeline. May 2014. American Civil Liberties Union. Available at: <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline?redirect=school-prison-pipeline> (last accessed Sept. 30, 2015).

⁸ Pew Charitable Trust Infographic, 2013. Available at: https://chiyouthjustice.files.wordpress.com/2013/09/pspp_juvenile_graphicv2.jpg (last accessed Feb. 27, 2015)

⁹ No Place for Kids: The Case for Reducing Juvenile Incarceration. *The Annie E. Casey Foundation*. 2011. (Feb 27, 2015). Available at: <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>. (last accessed Feb. 27, 2015)

¹⁰Skiba, Russell et al. New and Developing Research on Disparities in Discipline. January 2015. The Equity Project at Indiana University. Available at: <http://www.indiana.edu/~equity/projects.php> (last accessed Sept. 30, 2015).

¹¹ What is the School-to-Prison Pipeline? *American Civil Liberties Union*. Available at: <https://www.aclu.org/racial-justice/what-school-prison-pipeline> (last accessed Feb. 27, 2015).

- *Police presence in school hallways* has shifted disciplinary responsibilities in many schools from teachers and administrators to police, resulting in an increase in school based arrests, often for non-violent offenses such as disruptive behavior.
- *Disciplinary Alternative Schools*, available in some jurisdictions as an alternative for students who have been suspended or expelled, reportedly lack the same educational standards as traditional schools, and often result in students falling farther behind, increasing the likelihood of contact with the juvenile justice system.
- *Juvenile Court Involvement* frequently results in “boilerplate” probation conditions for youth such as prohibitions against missing school or receiving even minor disciplinary infractions at school. Students are then often sent to secure detention facilities for violations of these strict terms.
- *Juvenile Detention* often results in a further decline in students’ academic progress, making it difficult, if not impossible, to re-enter traditional schools upon release, and increasing the likelihood of future law enforcement contact.

Regardless of whether or not such policies and practices are applied in an explicitly discriminatory manner, the Committee sought to study the *impact* of these and other related policies on school discipline and youth incarceration rates in the State of Indiana, particularly as they may unduly influence disparities in incarceration rates on the basis of race, color, sex, and disability status. As noted, Title VI of the U.S. Civil Rights Act of 1964 “prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.”¹² According to the U.S. Department of Justice, “Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.”¹³ Therefore, the Committee sought to examine the extent to which evidence suggests disparate impact, regardless of explicit discriminatory intent.

According to the National Institute of Corrections of the United States Department of Justice, in 2014 the State of Indiana had an incarceration rate 13 percent higher than the national average, at

¹³See United States Department of Justice Title VI Legal Manual, available at <http://www.justice.gov/crt/title-vi-legal-manual#Disparate>. (last accessed October 09, 2015)

442 adults per 100,000 people.¹⁴ The Kids Count Data Center of the Annie E. Casey Foundation reports that for *youth* age 10 and older in Indiana, the incarceration rate is 258 per 100,000 youth, which is approximately 25 percent greater than the national average of 196.¹⁵ While some progress has been made, —between 1997 and 2010, the State of Indiana saw only a 22 percent decline in youth incarceration rates—nationally, Indiana has remained behind the curve. During this same timeframe, the country as a whole saw a 37 percent decline in youth incarcerations.¹⁶

Despite recent declines in overall youth incarcerations, data suggests that a number of disparities persist in the demographics of youth who remain incarcerated, both nationally and in the State of Indiana. In particular, youth involvement in exclusionary school disciplinary actions such as suspension and expulsion, as well as youth involvement in the juvenile justice system, continue to demonstrate a strong disparate impact on the basis of race, color, disability status, and sex. To illustrate:

- *Race/color:* The Annie E. Casey Foundation reports that African American youth face nearly five times the likelihood of incarceration compared to their white peers across the country; Latino and Native American youth face between two and three times the likelihood.¹⁷
- *Disability status:* According to the U.S. Department of Education Office of Civil Rights, students with disabilities represent a quarter of students arrested and referred to law enforcement nationally, even though they are only 12 percent of the overall student

¹⁴ National Average is 395 incarcerated adults per 100,000 people. Source: National Institute for Corrections, *Correction Statistics by State*, 2013. *U.S. Department of Justice*. Available at <http://nicic.gov/statestats/default.aspx?st=IN> (Last accessed Sept. 28, 2015)

¹⁵ According to 2011 data, the most recent available. Youth residing in Juvenile Detention, Correctional, and/or Residential Facilities. Annie E. Casey Foundation Kids Count Data Center 2011. Available at: <http://datacenter.kidscount.org/data/tables/42-youth-residing-in-juvenile-detention-correctional-and-or-residential-facilities?loc=1&loct=1#detailed/1/any/false/867,133,18,17,14/any/319,320> (last accessed March 2, 2015)

¹⁶ Annie E. Casey Foundation: Reducing Youth Incarceration in the United States. February 2013 Kids Count Data Snapshot. Available at: <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf> (last accessed March 2, 2015)

¹⁷ Youth in Incarceration in the United States. *The Annie E. Casey Foundation*. 2011. Available at: <http://www.aecf.org/m/resourcedoc/aecf-YouthIncarcerationInfographic-2013.pdf> (last accessed Feb. 27, 2015)

population. Students with disabilities are also more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%).¹⁸

- *Sex:* According to the U.S. Department of Justice, in 2012 the national arrest rate for boys was just under 6,000 per 100,000 males age 10-17, while the arrest rate for girls was less than half this number, at just under 2,500.¹⁹ Similarly, the U.S. Department of Education reports that beginning as early as preschool, boys represent 82 percent of school children suspended multiple times, while only representing 54 percent of the preschool enrollment.²⁰

Given these well-documented and persistent disparities, the Committee's purpose was to study possible civil rights violations and underlying factors that may contribute to this concern, and to identify best practices and potential solutions to address it. In reaching the findings and recommendations that follow, the committee also considered Indiana's exploration of this issue found in the Indiana Legislative Services Agency, Interim Study Committee on Education 2014 Report on educational services in Indiana.

¹⁸ Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1. U.S. Department of Education Office for Civil Rights. 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> (last accessed Feb. 27, 2015)

¹⁹ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Arrest Rate Trends 1980-2012 Statistical Briefing Book. Available at: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05230 (last accessed Feb. 27, 2015)

²⁰ Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1. U.S. Department of Education Office for Civil Rights. 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> (last accessed Feb. 27, 2015)

III. SUMMARY OF PANEL TESTIMONY

A. Juvenile Justice Disparities: Historical and Contemporary Context

According to the latest statistics reported by The Sentencing Project, a Washington, D.C. based nonprofit research organization that studies racial disparities in the U.S. criminal justice system, the United States is “the world's leader in incarceration with 2.2 million people currently in the nation's prisons and jails.”²¹ The phenomenon known as “mass incarceration” refers to the 500% increase in the prison population in the United States over the last forty years.²² Unfortunately, African American males have borne the brunt of this increase. A recent analysis by Becky Pettit, a University of Washington sociologist, found that in 2008, “young black men (ages 18-34) were at least six times more likely to be incarcerated than young white men.”²³ The Committee heard testimony which indicates that this stark disparity reflects deep historical roots. According to Dr. Alex Lichtenstein, a historian of American incarceration and Professor of History at Indiana University-Bloomington, the last 150 years of U.S. history suggests an over reliance on the penal system to target and discipline minority youth. His testimony detailed three waves, or periods in U.S. history, that represent a “recurrent turn to penal discipline” for minority populations, especially African American youth.

The first wave was shortly after the abolition of slavery. Southern states adopted draconian statutes designed to disenfranchise and criminalize a new generation of free African Americans.²⁴ Vagrancy laws, public order violations, and the like, represented an intentional expansion of incarceration, and scores of prison registers reveal an overrepresentation of African American adolescents. Lichtenstein noted, “Some as young as 12 years old, received lengthy sentences, five, ten, fifteen years for very petty crimes. Jails and penal camps designed to exploit

²¹ The Sentencing Project, *Trends in U.S. Corrections*, 2014. Available at: <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>. Last Accessed on August 8, 2016.

²² Ibid. P. 2

²³ Population Reference Bureau, *U.S. Has World's Highest Incarceration Rate*, August, 2012. Available at: <http://www.prb.org/Publications/Articles/2012/us-incarceration.aspx>

²⁴ Lichtenstein Testimony, February Transcript p.30-31, lines 9-16

black labor, not schools designed to educate newly free people, were the institutions of choice in the post-reconstruction south.”²⁵

The next wave was in response to what is known as “The Great Migration.” Driven by a desire to escape the segregated and oppressive south, African American families journeyed to northern cities such as Chicago, Detroit, Philadelphia, Cleveland, St. Louis, and Gary in the early 20th century.²⁶ The migration reflected the hopes of many African Americans: economic opportunity and a quality education for their children. Sadly, many of the cities and states responded to the migration with residential segregation and racial confinement.²⁷ Discriminatory housing policies such as redlining and restrictive covenants created predominantly African American impoverished urban neighborhoods. Today, many of these same neighborhoods remain “highly segregated with poor housing stock, concentrated high poverty rates, underperforming schools with high suspension and expulsion rates, high incarceration rates, and violent policing.”²⁸ Lichtenstein suggests that the “formation of these black communities created a national identification of crime,” associating blackness with criminality.²⁹ Consequently, there was an “increased turn to the power of the law” to control the perceived criminal threat, and “the cohort most at risk of entanglement with the criminal justice system is young men between the ages of 15 and 25.”³⁰ For Lichtenstein, this is the context for America’s current racial disparities regarding imprisonment, correctional control, death by police misconduct, and the school-to-prison pipeline.³¹

Lichtenstein’s testimony concluded with an illustration of how today’s school-to-prison pipeline represents the third wave of the country’s return to penal discipline as a form of social control.³² He stated, “Over and over again the historical records suggest [that] the criminal justice system has served as a firewall against the full development of racial equality, and minority youth has frequently been its primary target.”³³ For many minority youth whose lives are circumscribed by

²⁵Lichtenstein Testimony, February Transcript p.29 lines 16-20

²⁶ Lichtenstein Testimony, February Transcript p.32 lines 10-14

²⁷ Lichtenstein Testimony, February Transcript p.32 lines 22-25

²⁸ Lichtenstein Testimony, February Transcript p.34 lines 22-25

²⁹ Lichtenstein Testimony, February Transcript p.33 lines 6-13

³⁰Lichtenstein Testimony, February Transcript p.27 lines 18-22

³¹ Lichtenstein Testimony, February Transcript p.33 lines 14-21

³² Lichtenstein Testimony, February Transcript p.35 lines 5-16

³³Lichtenstein Testimony, February Transcript P.27 lines 14-18.

largely segregated neighborhoods, concentrated high poverty rates, underperforming schools, and high incarceration rates, jails, and not schools, are again “the main agent of their socialization.”³⁴ In many predominantly minority neighborhoods more money is being spent annually on incarceration rather than on schools.³⁵ The historical roots of these neighborhoods help contextualize the high levels of youth exposure to the criminal justice system today.³⁶

The Committee received written testimony from Ms. Carlotta Blake-King, a member of Hammond’s Grassroots Coalition of Concerned Citizens for Social Justice, who alleged that the city was engaging in the “racial profiling” of children of color. The Hammond Police Department’s 2014 “J-Walking” ordinance, which was initially funded by an Indiana Criminal Justice Institute grant, allows officers to issue J-walking tickets to middle and high school students who “block or congest” traffic by “walking in the streets.”³⁷ Although the measure was passed by the City Council with the express intent of keeping students safe, Ms. Blake-King and other activists cited racial disproportionality in ticket administration as evidence of “biased policing.” Although African American students only make up 34% of Hammond’s middle and high school population, they account for more than 51% of J-walking citations.³⁸ Furthermore, Ms. Blake-King mentioned students who had to go before a Hammond City Court judge facing as much as \$250 in J-walking fines. Some students were told if they, or their parents, did not pay the fines they could not get a permit or driver’s license. On October 17, 2014 a Town Hall meeting was held by activists who had come together to demand a moratorium on the practice, noting that it was a form of racial profiling, and in one instance, resulted in “excessive force” on the part of the issuing officer. Ms. Blake-King concluded “[this is] a practice that definitely falls under the school-to-prison pipeline [as it] subjects children as young as 10 to the criminal justice system.”³⁹

The high suspension and expulsion rates for minority youth, African American youth in particular, in cities and states across the nation are vestiges of a racialized criminal justice

³⁴ Lichtenstein Testimony, February Transcript P. 35 lines 5-16

³⁵ Lichtenstein Testimony, February Transcript P. 34 lines 3-7

³⁶ Lichtenstein Testimony, February Transcript P. 34 lines 14-18

³⁷ Written Testimony Submitted by Carlotta B. King. February 2016. Letter Written by Hammond Chief of Police, John Doughty in response to Ms. Carlotta Blake-King. December 1, 2014.

³⁸ Written Testimony Submitted by Carlotta B. King. February 2016. Letter Written by Hammond Chief of Police, John Doughty in response to Ms. Carlotta Blake-King. December 1, 2014.

³⁹ Written Testimony Submitted by Carlotta B. King. February 2016. *3rd Request- Moratorium/Indiana Criminal Justice Institute Grant*. January 26, 2015.

system.⁴⁰ Lichtenstein suggested that school districts in Indiana, and across the country, address the “inescapable fact that the youthful indiscretions of minority youth, and African American youth in particular, have historically resulted in penal sanctions.”⁴¹ Without serious engagement of this history, schools and districts will continue to disproportionately punish youth of color for subjective—or relatively mild—infractions thereby increasing their risk of contact with the juvenile and criminal justice system.

B. Bias: Race, Sex, Disability, and Intersectionality

1. Race Bias

On July 12, 2016 President Barack Obama gave remarks at the memorial service for five Dallas police officers who lost their lives at the hands of a lone shooter four days prior. The shooter had targeted white police in response to the killings of two black men by officers in other parts of the country. The incidents propelled the ever-present issue of race to the forefront of American consciousness, and the President’s words attempted to comfort, as well as challenge, the nation regarding what he believed to be the root cause of these tragedies: racial bias. He said, “We know that centuries of racial discrimination—of slavery, and subjugation, and Jim Crow—they didn’t simply vanish with the end of lawful segregation. They didn’t just stop when Dr. King made a speech, or [when] the Voting Rights and the Civil Rights Act were signed. Race relations have improved dramatically in my lifetime...But we know that bias remains...No institution is entirely immune.”⁴²

A 2014 study of the Center for Evaluation and Education Policy at Indiana University School of Education, *You Can’t Fix What You Don’t Look At: Acknowledging Race and Addressing Racial Discipline Disparities*, notes, “Regardless of our attempts to avoid the topic, the issue of race emerges over and over again, permeating our society and conditioning our lives.”⁴³ The authors

⁴⁰Lichtenstein Testimony, February Transcript P. 35 lines 5-9

⁴¹Lichtenstein Testimony, February Transcript P. 28 lines 20-25

⁴² The White House Office of the Press Secretary, “[Official] remarks by the President at Memorial Service for Fallen Dallas Police Officers.” July, 2016. Available at: <https://www.whitehouse.gov/the-press-office/2016/07/12/remarks-president-memorial-service-fallen-dallas-police-officers>

⁴³ Discipline Disparities: A Research-to-Practice Collaborative. December 2014. P.7 Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

acknowledge the “multi-faceted prejudice”⁴⁴ that often leads to racial profiling⁴⁵ or the “presumption of guilt”⁴⁶ for people of color, particularly African Americans. In congruence with the President’s words, the authors recognize the influence of race bias on every facet of society, including the American education system. They note, “For many youth in our nation, the consequences of our heritage of presumed racial difference and long standing segregation play themselves out on a daily basis through lowered expectations, decreased educational opportunity, and disciplinary overreaction. Today in schools, our interactions across racial lines yield differential outcomes in school discipline, with devastating consequences for the young people served.”⁴⁷ They conclude, “If race-conscious approaches to education” are not considered, race bias will continue to disproportionately impact students of color, and exacerbate the school-to-prison pipeline.⁴⁸

2. *Implicit Bias*

Psychologists differentiate between “explicit” and “implicit” bias. Explicit bias is “old-fashioned prejudice” against individuals and groups held at a conscious level.⁴⁹ Despite the existence of anti-discrimination laws and mainstream cultural norms, explicit bias undoubtedly persists. (The flying of Confederate flags and hate crimes against Arab, South Asian, and Muslim Americans are two everyday examples.) Implicit bias, in contrast, is “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner,” according to the Kirwan Institute for the Study of Race and Ethnicity.⁵⁰ Furthermore, it “is the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race,

⁴⁴ Discipline Disparities: A Research-to-Practice Collaborative. December 2014. P.7 Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

⁴⁵ American Psychological Association, December 2008. P.855. Available here: <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

⁴⁶ <http://jjiie.org/capitol-hill-roundtable-interrupt-the-poverty-to-prison-pipeline/107348/>

⁴⁷ Discipline Disparities: A Research-to-Practice Collaborative. December 2014. P.7 Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

⁴⁸ Discipline Disparities: A Research-to-Practice Collaborative. December 2014. P.7 Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

⁴⁹ Need citation

⁵⁰ Kirwan Institute for the Study of Race and Ethnicity. Kirwan Institute Issue Brief, Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated. February 2014. P.3 See also Anthony G. Greenwald and Mahzarin R. Banaji, “Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes,” *Psychological Review* Vol. 102, No. 1 (1995): 4-27.

ethnicity, age and appearance.”⁵¹ Contemporary forms of negative, race-based stereotypes often manifest in implicit bias. Legal scholar Linda Hamilton Krieger, who has studied the relationship between bias and discrimination in the workplace, maintains that biases are “plausibly stereotype-based,” and generally reflect underlying perceptions and attitudes against certain identity groups.⁵² Measures such as the Implicit Association Test (IAT), designed by a group of Harvard researchers in 1997, have allowed Krieger and other researchers to draw conclusions about the pervasiveness of [both] explicit and implicit biases.”⁵³ For instance, one study revealed that both white and black participants more quickly associated “black faces with words representing violent and aggressive concepts,” than white ones.⁵⁴ As Johanna Wald, Director of Strategic Planning at the Charles Hamilton Houston Institute for Race and Justice, notes “The striking aspect of this test is that this bias pattern exist both among those who express explicit prejudices and those who deny them.”⁵⁵

The prevalence of implicit bias suggests that it potentially may be even more damaging than explicit bias because individuals may not admit to or even be aware of their own harmful attitudes, beliefs, and stereotypes.⁵⁶ They may even “explicitly disavow prejudice.”⁵⁷ Given the history of race and racism in America, an analysis of implicit bias is therefore critical to examining the impact it may have on racial disparities in suspension, expulsion, school arrest, and other exclusionary forms of discipline in the American education system. Dr. Russell Skiba, Director of the Equity Project at Indiana University, testified before the Committee: “We have known about the overrepresentation of African American students in school suspensions for 40 years, since the work of the Children's Defense Fund in the mid-70s, but in the last year and a half to two years there has been remarkable progress in attention to [these] issues.”⁵⁸

⁵¹ Ibid P.3

⁵² Greenwald, Anthony and Krieger, Linda. California Law Review VOL. 94, No.4. “Implicit Bias: Scientific Foundations.” July 2006, P.951 Available: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1250&context=californialawreview>

⁵³ Greenwald & Krieger. P. 955

⁵⁴ Ibid P.1

⁵⁵ Ibid P.1

⁵⁶ Greenwald & Krieger. P.959.

⁵⁷ Anthony G. Greenwald and Mahzarin R. Banaji, “Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes,” *Psychological Review* Vol. 102, No. 1, 4.

⁵⁸ Skiba Testimony *February 2016 Transcript*, P. 11, lines 10-15

Dr. Skiba contended that the overrepresentation of African American students in suspension and expulsion rates is largely due to bias in schools. He testified that the "data has been consistent in showing that there is not a higher rate of misbehavior/disruptive behavior [among African American students] that could sufficiently account for the overrepresentation of these students in suspension/expulsion."⁵⁹ Instead, "if one controls for poverty and mult-varied equations, race remains [as the] significant predictor" of exclusionary discipline for students.⁶⁰ Furthermore, Dr. Skiba asserted, "higher rates of suspension and expulsion are not due to higher rates of African American misbehavior," [which indicates that] something "deeper" is at play.⁶¹ He referenced a study that surveyed the major reasons for out-of-school suspensions in the state of Indiana. The findings reveal that Black male and female students were more likely to be suspended or expelled for subjective reasons such as "defiance," whereas white students were more likely to face disciplinary action for objective infractions, such as bringing a weapon to school.⁶² As the Kirwan Institute noted in a similar study, "among students who were classified as overtly aggressive, African American [boys and girls] were more likely to be disciplined than any other group."⁶³ These "stereotypes of Black students as unruly, disruptive and disrespectful" are based on age-old race-based perceptions," and teachers and other school personnel may harbor negative assumptions about the [disposition], ability, aspirations and work ethic of African American students."⁶⁴ During the hearing, the testimony of other panelists consistently indicated that the implicit race bias embedded in school systems impacted education and school discipline.⁶⁵

Dr. Laura McNeal, an Associate Professor of Law at the University of Louisville's Brandeis School of Law, and Law & Policy Analyst for the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, shared her insights on racial implicit bias in American education with the Committee noting, "Despite the belief by many legal scholars that we are living in a post-racial society, the stark reality is race still matters, especially in the school

⁵⁹Skiba Testimony February 2016 Transcript, P. 15, Lines 8-14

⁶⁰Skiba Testimony February 2016 Transcript, P. 15, Lines 7-8

⁶¹ Skiba Testimony, February 2016. P. 12, Lines 21-25

⁶² Skiba, R. J., Chung, C-G., Trachok, M., Baker, T., Sheya, A., & Hughes, R. (2015). Where should we intervene? Contributions of behavior, student, and school characteristics to out-of-school suspension. In D. J. Losen (Ed.), *Closing the school discipline gap: Equitable remedies for excessive exclusion* (pp. 132-146). New York: Teachers College Press.

⁶³ Kirwan Institute, February 2014, P. 2

⁶⁴ Kirwan Institute, February 2014, P. 2

⁶⁵ Skiba Testimony. February 2016. P. 20, lines 15-16. Kilver Testimony. February 2016. P. 176, lines 23-35. Jackson Testimony. February 2016. P. 201, lines 18-20

disciplinary context.”⁶⁶ McNeal contended that there are several factors that contribute to—and perpetuate—the school-to-prison pipeline. She urged the Committee to consider racial implicit, or unconscious, bias as the root cause stating, “The majority of school disciplinary sanctions are the product of split second decisions, which as implicit bias research reveal, is the context in which our unconscious biases have the greatest influence...especially in relation to the school-to-prison pipeline.”⁶⁷

In sum, research has shown that the American education system is not immune to the societal inequalities surrounding race. In fact, there are deep-seated imbalances that manifest in racially disproportionate school discipline patterns primarily caused by racial implicit biases. “Some research suggests that white and Black students may receive differential treatment in terms of opportunities to participate in learning strategies, or different teacher reactions to misbehavior.”⁶⁸ In order to directly address such disparities in the education system Dr. Skiba recommended four prescriptions: 1) “Make sure that school data is disaggregated,” because it will ensure that we know “where exactly the disproportionality is occurring and how great are the disparities,” 2) schools must begin to look at race as the root cause of the disparities, 3) sufficient support must be given to educators to implement alternatives to suspension and expulsion, and 4) school-discipline interventions must not be race-neutral. Race neutral interventions overlook the implicit bias that is always at play.⁶⁹

3. *Race and Sex Bias*

Dr. Shollenberger found that “nearly half of black boys (46%), more than two in five Hispanic boys (42%), and more than one in three white boys (36%) who were suspended at any point during their school careers, had not obtained a high school diploma by their late 20s.”⁷⁰ Dr. Shollenberger suggests that the disparities among boys of color can in-part be “explained by discrimination in the application of discipline.”⁷¹

Dr. Shollenberger’s research and analysis highlights the intersectionality between race and sex: together, the two identities make some populations more susceptible to being funneled into the

⁶⁶ McNeal Written Testimony. March 2016. P.2

⁶⁷ Ibid. P.6

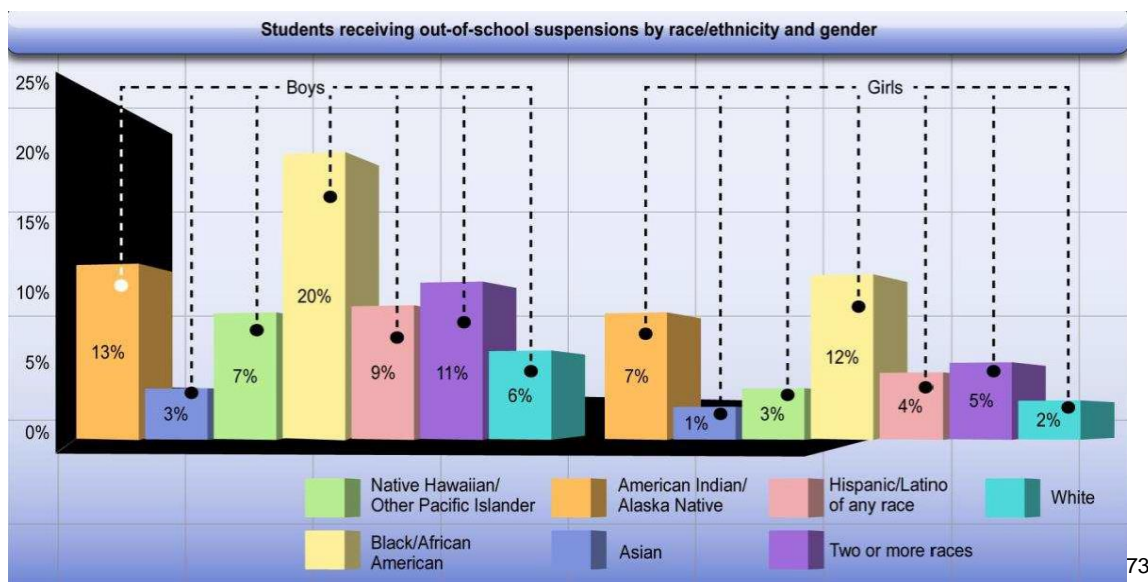
⁶⁸ Discipline to Disparities: A Research-to-Practice Collaborative. December 2014. P4 Available at: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

⁶⁹ Skiba Testimony. February 2016. P. 20. Lines 13-22

⁷⁰ Ibid. P.7

⁷¹ Ibid. P. 11

school-to-prison pipeline. According to data compiled by the U.S. Department of Education Office for Civil Rights, “Black boys and girls have higher suspension rates than any of their peers. [Nationally] 20% of black boys and more than 12% of black girls receive an out-of-school suspension, compared to 6% of white boys and 2% of white girls.”⁷² The following graph depicts such disparity, highlighting the interaction between race and sex, and underscoring its role in exclusionary school discipline outcomes.



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Testimony corroborated these findings. Dr. Skiba asserted “African American males are more likely to be overrepresented in suspension and expulsion, [and] recent studies have also found [that] there is an overrepresentation of African American females.”⁷⁴ Dr. Skiba commented that Indiana’s numbers are also “of great concern.”⁷⁵ According to 2014 statistics, Indiana ranks

⁷² Civil Rights Data Collection *Data Snapshot: School Discipline*, Issue Brief No. 1, March 2014, P.3

⁷³ NOTE: Data reflects 99% of CRDC schools and a total of 290,000 American Indian/Alaska Native females, 300,000 American Indian/Alaska Native males, 1.1 million Asian males, 1.2 million Asian females, 120,000 Native Hawaiian/Other Pacific Islander males and females, 3.7 million black females, 3.8 million black males, 5.6 million Hispanic females, 5.9 million Hispanic males, 630,000 males of two or more races, 640,000 females of two or more races, 12 million white males, and 12 million white females. SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

⁷⁴ Skiba Testimony. February 2016. P. 12, Lines 21-25

⁷⁵ Skiba Testimony. February 2016. P. 12, Lines 21-25

second in the country in its rate of Black male out-of-school suspensions, and ranks fourth in the rate of Black female out-of-school suspensions.⁷⁶

Dr. Marvin Lynn, Professor of Education and Dean of the School of Education at Indiana University-South Bend, noted, “I am specifically interested in the domain of the classroom as a site of activity for the kinds of practices that,” produce such negative outcomes for black males.⁷⁷ He went on to cite 2009-10 Civil Rights data stating, “Black males make up 18% of public school enrollment nationally, but 35% of those suspended once, 46% of those suspended more than once, and 39% of all expulsions.”⁷⁸ According to Dr. Lynn, these outcomes are tragically “quite natural and normalized” due to the realities of race and sex in America; the fact that black males are at a higher risk of being suspended, expelled, and referred to the juvenile justice system begs root cause analysis.⁷⁹

The data and personal stories shared by panelists point to the damaging effects that racial bias has on Black males, in particular. “Corrosive stereotypes—like the dangerous Black male—[are rooted] deep in our nation’s psyche, and whether or not they reach our consciousness, [they] remain entwined in our thinking and our practices.”⁸⁰ Dr. Lynn referenced *Bad Boys: Public Schools in the Making of Black Masculinity*, a book written by Arnett Ferguson, Assistant Professor of Afro-American Studies and Women's Studies at Smith College, which detailed “how a group of eleven- and twelve-year-old [black] males [were] identified by school personnel as “bound for jail” and how the youth constructed a sense of self under such adverse circumstances.”⁸¹ His mention of Ferguson’s qualitative study illustrated how “certain discipline processes dehumanize black males”, placing subjective labels such as “bad boy,” “aggressive,” and “disruptive” on them thereby impacting their sense of self.⁸²

Dr. Monica Solinas-Saunders, Assistant Professor at the School of Public and Environmental Affairs at Indiana University-Northwest, gave testimony to the Committee which substantiated

⁷⁶ Skiba Testimony. February 2016. P. 16, Lines 1-9, Civil Rights Data Collection, March 2014

⁷⁷ Lynn Testimony. February 2016. P. 37, Lines 7-10

⁷⁸ Lynn Testimony. February 2016. P. 37-8, Lines 20-25, 1-3. U.S. Civil Rights Data, 2009-10

⁷⁹ Lynn Testimony. February 2016. P. 37, Lines 14-16

⁸⁰ Discipline Disparities: A Research-to-Practice Collaborative. December 2014. P.7 Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

⁸¹ Description of Arnett Ferguson’s book (2001) provided by the University of Michigan Publishing. Website available here: https://www.press.umich.edu/16797/bad_boys

⁸² Lynn Testimony. February 2016. P. 39, Lines 11-17 and Lichtenstein Testimony. February 2016. P. 28, Lines 1-5

the race and sex bias against students of color regarding school discipline outcomes. As an expert who has been studying exclusionary discipline policies and the juvenile detention system, Dr. Solinas-Saunders stated “the bias that occurs against minority youth in schools” starts early.⁸³ In concurrence, Barbara Williams, the State President for the NAACP Indiana State Conference and Chair of the Criminal Justice Committee of the National Board of Directors, stated that many districts institute exclusionary discipline policies as early as preschool.⁸⁴ In fact, nationally “Black children, only representing 18% of the preschool population, [account for] 48% of the children receiving more than one out-of-school suspension, Hispanic and African-American boys combined represent 46% of all boys in preschool, but 66% of their same-age peers who are suspended, and boys, represent 79% of preschool children suspended once and 82% of preschool children suspended multiple times, although boys [only] represent 54% of preschool enrollment.”⁸⁵ As Saunders, Williams, and several other panelists indicated, the race and sex bias that permeates the education system negatively impacts the most vulnerable student populations, beginning as young as preschool and ultimately making them more susceptible to the unforgiving grip of the criminal justice system.

4. *Disability Bias*

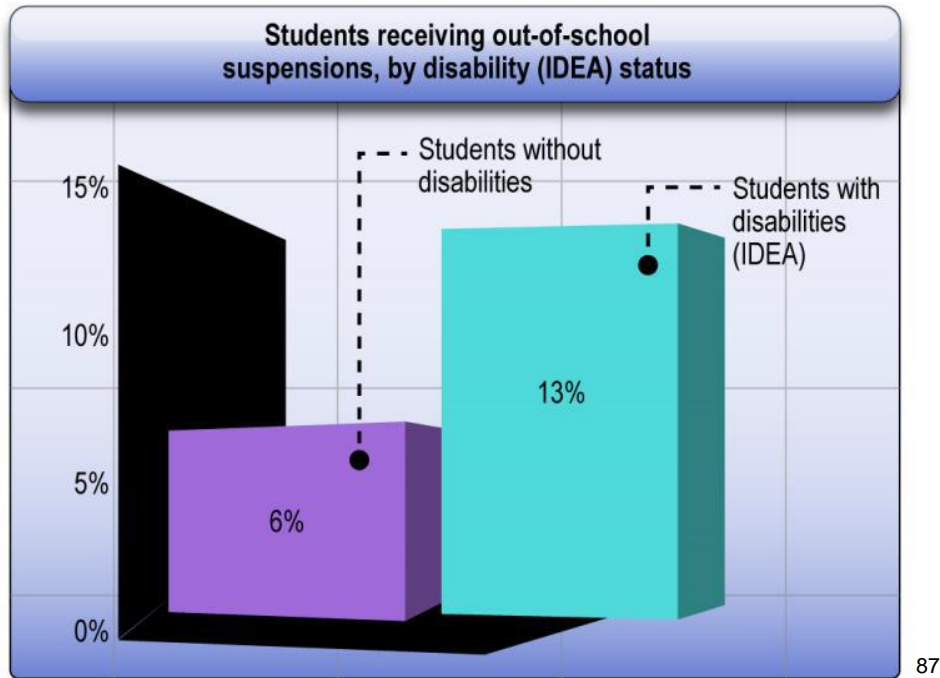
In addition to bias based on race and sex, the data also indicate that students with disabilities are particularly vulnerable to the school-to-prison pipeline. According to panelist Rebecca Cokley, the Executive Director of the National Council on Disability, despite the IDEA, Individuals With Disabilities Education Act-- passed to ensure that students with disabilities are provided with free and appropriate public education, “schools continue to exclude students with disabilities at disproportionate rates.”⁸⁶ The following graph highlights the reality that “students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspension as students without disabilities.”

⁸³ Saunders Testimony, February 2016. P. 22, Lines 13-15

⁸⁴ Williams Testimony, *Web Hearing*. January 2016, P. 7

⁸⁵ Ibid P.7 The U.S. Department of Education and the U.S. Department of Health and Human Services have issued a joint Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings (Dec. 10, 2014). <https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf>

⁸⁶ Cokley Testimony, *Web Hearing*, January 2016, P. 5 Lines 9-11



Furthermore, students with disabilities only represent 12% of the [national] student population, but 25% of students who are referred to law enforcement or subjected to school related arrests, 58% of students subjected to seclusion in school, and 75% of the students who are subjected to physical restraint during school.”⁸⁸ These national disparities are reflected in the state of Indiana. As Dr. Barbara Williams noted, “In the 2011-12 school year there were 1,060 Indiana public school students with disabilities referred to law enforcement and 400 Indiana public school students with disabilities received expulsions without educational services, 94.8% of which were students with disabilities served under IDEA.”⁸⁹ These statistics underscore the veracity of disability bias in the American public education system, demonstrating that being labeled as having a disability may make a student more at risk of being suspended and ending up in the

⁸⁷ NOTE: Data reflects 99% of CRDC schools, including 43.5 million students without disabilities and 6 million students with disabilities. SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

⁸⁸ Civil Rights Data Collection Data Snapshot: School Discipline, Issue Brief No. 1, March 2014, P. 7-9

⁸⁹ Barbara Williams, Written Testimony, January 2016 to the Indiana Civil Rights Commission on Student discipline. P.2-3

juvenile justice system.⁹⁰ Just as race and sex-based bias lead to negative outcomes for students, so too does disability bias make students susceptible to the School to Prison Pipeline.⁹¹

Panelist Rebecca Cokley, described the variety of disabilities that impact students' educational outcomes, including learning, behavioral, and mental health, which special educators identify through various assessments.⁹² She noted, "Special education is not a place. It is a system of services and supports that students with disabilities have a right to."⁹³ Tragically, "students who qualify for special education too often receive inferior services in segregated settings and [ultimately] incur repeated suspensions and expulsions."⁹⁴ Melissa Keyes, the Legal Director for Indiana Protection Advocacy Services, described the "formal and informal mechanisms" that cause students with disabilities to be disproportionately represented in suspension and juvenile justice involvement rates. One such formal mechanism is the "10-day rule."⁹⁵ This rule "allows a school to remove a child with a disability who violates a code of conduct for not more than 10 school days without being required to provide services."⁹⁶ Students with disabilities are protected by a "procedural safeguard which prevents schools from suspending them over ten consecutive days or ten cumulative days, if it is based on the same behavior."⁹⁷ However, panelists raised concern that this rule may incentivize schools to "spread out short term suspensions over the course of a school year without triggering the 10-day procedural safeguard."⁹⁸ Additionally, "schools have no obligation to intervene until the 11th day, but by that time, the [loss of instructional time] has already done its damage and "studies have shown that education is severely and often irrevocably compromised [for students] after ten days of suspension."⁹⁹ Less formal/overt mechanisms of excluding students with disabilities from school include "having shortened school days in a student's IEP (Individualized Education Plan), providing limited

⁹⁰ Annamma Testimony, January 2016, P. 11, Lines 13-16

⁹¹ Annamma Testimony, January 2016, P. 11, Line 16

⁹² Annamma Testimony, January 2016, P.11 37-8

⁹³ Cokley Testimony, Web Hearing. January 2016, P.4. lines 33-39

⁹⁴ Cokley, P. 4, Lines 16-17

⁹⁵ Keyes Testimony. February 2016. P.125, Lines 20-23 The "10-day" measure is included in the IDEA law.

⁹⁶ Keyes Testimony. February 2016. P. 125, Lines 20-22

⁹⁷ Keyes Testimony. February 2016. P. 126, Lines 1-3

⁹⁸ Keyes Testimony. February 2016. P. 126, Lines 1-10

⁹⁹ Keyes Testimony. February 2016. P. 126, Lines 8-10

homebound instruction, and lengthy stays in seclusion rooms,” but the result is roughly the same: exclusion and harmful outcomes.¹⁰⁰

Testimony before the committee indicated that “anywhere from 65% to 85% of children in the juvenile justice system” have a disability.”¹⁰¹ Keyes explained to the Committee why this approximation was so wide-ranging: “Determining how many children with disabilities are in the juvenile justice system is difficult because there is poor and inconsistent diagnostic assessments, [we are] relying on self-report, and [there are] no real standard requirements for data collection across the number of different areas.”¹⁰² Ms. Keyes’ analysis points to the need for more data on this issue in order to fully understand its impact on this population.¹⁰³

According to Carol Kilver, Assistant Superintendent for Secondary curriculum in the Lafayette School Corporation, 70% of Indiana’s juvenile justice youth have a disability and or mental illness.¹⁰⁴ The disproportionate representation of students with disabilities in the juvenile justice system suggests that public education does not adequately “identify and evaluate” children with disabilities while they are students.¹⁰⁵ To address this issue Ms. Cokley suggested that the state “assists students with disabilities and their families in getting and understanding these [Special Education] services, and providing oversight to the delivery of those services.”¹⁰⁶

Several other recommendations were made to comprehensively address the role of disability bias in the school-to-prison pipeline:

1. “students with disabilities and their families need accurate information, training, and leadership development to effectively understand how they can really use the Individuals with Disabilities Education Act as a tool to secure better services.”
2. [The Department of Education must] “bolster its efforts to monitor and enforce the Free and Appropriate Public Education (FAPE) piece of the law to ensure a serious move away from seclusion and restraint.”

¹⁰⁰ Keyes Testimony. February 2016. P. 126, Lines 11-15

¹⁰¹ Melissa Keyes Testimony. February 2016. P. 123, Lines 18-20

¹⁰² Ibid P. 123, Lines 12-15

¹⁰³ Keyes Testimony, February 2016, P. 124, lines 6-10

¹⁰⁴ Kilver Testimony, February 2016, P. 175, Lines 18-20

¹⁰⁵ Keyes Testimony, P. 128, Lines 3-6

¹⁰⁶ Cokley Testimony, Web Hearing P. 5 Lines 1-2

3. There must be minimum subsequent standards for the quality and delivery of special education and the related services specifically as they relate to behavioral support.
4. Implementation of bias training, agreements, and compliance reviews.
5. Evaluate bias in schools where minorities are overrepresented in disability identification, and more importantly discipline.¹⁰⁷

5. *Intersectionality: Race, Sex, and Disability Status*

The last recommendation offered above raises a critical point regarding how a student's disability often intersects with her/his race and sex identity. Dr. Subini Annamma, Assistant Professor in the Department of Special Education at the University of Kansas, provided testimony which suggested that when two or three of the aforementioned categories overlap, students are at a higher risk of being "funneled into the school-to-prison pipeline."¹⁰⁸ For example, Ms. Cokley noted that "schools suspend minority students with disabilities many times the rate of their white counterparts."¹⁰⁹ Cynthia Jackson, the Positive Discipline Coordinator of the Indianapolis Public School system, gave testimony to the Committee which detailed the findings of an initiative to review the discipline practices and policies of the system. Jackson stated that of the "7,863 incidences of out-of-school suspension, 79% were African American (although the district is only 50% Black), and of that, 33% had disabilities."¹¹⁰ Jackson also noted that the system review revealed disproportionate outcomes for Black female students, many with disabilities.¹¹¹ The link between race, sex, and disability-based bias and suspension, expulsion, and juvenile incarceration rates is unfortunately strong nationally and in the state Indiana. As Tracey Shollenberger points out, the data "suggests that schools are suspending students who are already at risk for dropout and arrest."¹¹²

The bar graph below, compiled by the U.S. Department of Education-Office for Civil Rights, illustrates both Dr. Annamma and Ms. Cokley's concern, "Latino and Asian-American students with disabilities are suspended at significant but comparatively low rates (17% and 10% for

¹⁰⁷ Cokley Testimony, January 2016 P. 5-6

¹⁰⁸ Annamma Testimony, January 2016, P. 10, Lines 12-13

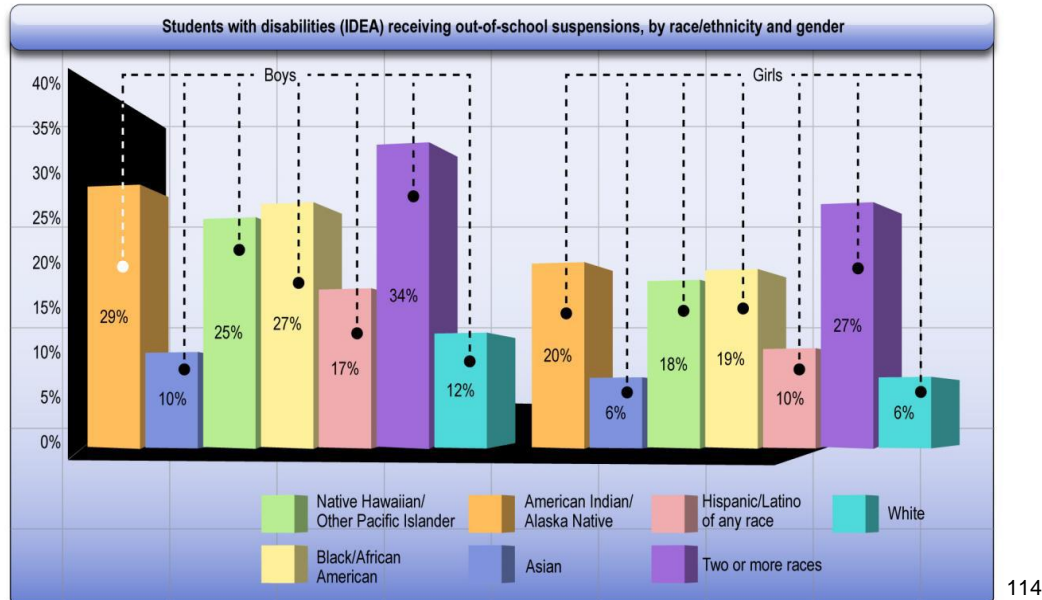
¹⁰⁹ Cokley Testimony, January 2016 P. 4, Lines 29-32

¹¹⁰ Jackson Testimony, February 2016. P. 197, Lines 1-15. 198, Lines 1-5

¹¹¹ Ibid

¹¹² Shollenberger, Tracey. Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth 1997. May 2013. P.2

Latino boys and girls, and 10% and 6% for Asian-American boys and girls, respectively) They are the exception to the rule applicable to other boys of color with disabilities, more than one out of four of whom receives an out-of-school suspension. Similarly, nearly one in five girls of color with disabilities receives an out-of-school suspension.”¹¹³



Other categories such as national origin/national citizenship, and sexual orientation/gender nonconforming were also cited by panelists as possible areas of intersection.¹¹⁵ For example, Veronica Cortez, staff attorney with the Mexican American Legal Defense Educational Fund (MALDEF), highlighted the particular struggles of English language learners. She stated, “In Indiana, English language learners have a lower graduation” [rate] than their peers.¹¹⁶ She cited a lack of support services as the root cause, and noted “many drop out, but more, they are pushed

¹¹³ Civil Rights Data Collection Data Snapshot: School Discipline, Issue Brief No. 1, March 2014, P. 4

¹¹⁴ NOTE: Data reflects 98.9% of CRDC schools. Totals include 40,000 male and 19,000 female student who are American Indian/Native Alaskan, 71,000 male and 25,000 female students who are Asian, 11,000 male and 4,000 female students who are Native Hawaiian/Other Pacific Islander, 750,000 male and 355,000 female students who are black, 840,000 male and 410,000 female students who are Latino, 69,000 male and 25,000 female students who are of two or more races, 2.1 million male and 1.1 million female students who are white.

¹¹⁵ Subini Testimony, Web Hearing, P. 17, Lines 20-29

¹¹⁶ Cortez Testimony, February 2016. P. 70-71 lines 4-21

out” because they don’t understand the rules, and collect a ton of minor infractions.¹¹⁷ “As a result,” Cortez described, “many of them adopt the attitude that they “don’t fit [in], and don’t belong.”¹¹⁸ Also, Cortez mentioned that “some English learners have undiagnosed special needs,” because the language and cultural barriers that exist prevent the communication necessary to identify them.¹¹⁹ Cortez recommended that Indiana, and states across the nation, establish “very specific programs for [this population] so that they are integrated into the school system,” and not put at risk of being funneled into the school-to-prison pipeline.¹²⁰ More attention and research is also needed to find whether national origin, or any other of the federally protected categories, is particularly vulnerable to the school-to-prison pipeline. Such research will be considered moving forward.

C. The Role of Poverty and Economic Disparities Between School Districts and Communities

A 2015 report by the Southern Education Foundation revealed that, “For the first time in recent history, a majority (51%) of the schoolchildren attending the nation’s public schools comes from low income families.”¹²¹ Furthermore, according to the National Equity Atlas, a research organization committed to socio-economic equity in the U.S.,¹²² students of color are more likely to attend “high poverty schools” than their white peers. As the graph depicts below, “42.6% of students of color [attend] high-poverty schools, [compared to] only 7.64 percent of white students.”¹²³

¹¹⁷ Cortez Testimony, February 2016. P. 70-71 lines 4-21

¹¹⁸ Cortez Testimony, February 2016. P. 70-71 lines 4-21

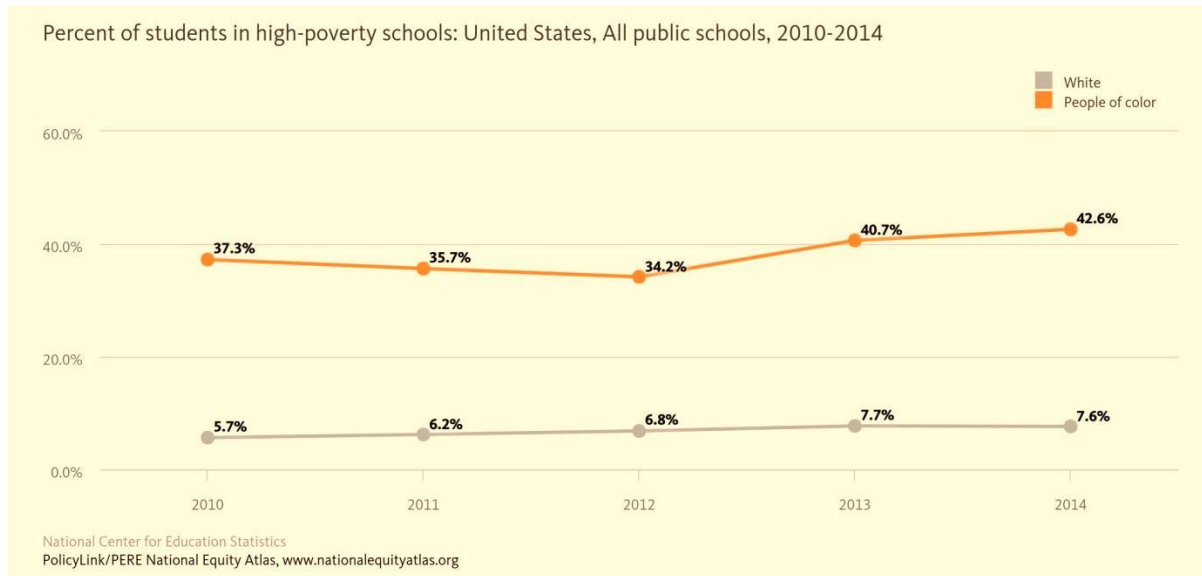
¹¹⁹ Cortez Testimony, February 2016. P. 70-71 lines 4-21

¹²⁰ Cortez Testimony, February 2016. P. 71 lines 11-12

¹²¹ Southern Education Foundation (SEF), Research Bulletin January 2015. P.1. Report available here: <http://www.southerneducation.org/getattachment/4ac62e27-5260-47a5-9d02-14896ec3a531/A-New-Majority-2015-Update-Low-Income-Students-Now.aspx>

¹²² Background information available here: <http://nationalequityatlas.org/about-the-atlas/background>

¹²³ National Equity Atlas 2010-2014 Report on School Poverty in the U.S. Available here: http://nationalequityatlas.org/indicators/School_poverty



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The researchers contend, “Because American neighborhoods are highly segregated by race and income, children of color are far more likely than their white counterparts to attend schools where the vast majority of students live in families who are struggling economically. These ‘high-poverty schools’ are charged with educating children who need more supports and services, yet are given inadequate funding, leading to a growing population of young people of color who are under-prepared to succeed in the workforce.”¹²⁵

Panelist Carol Kilver underscored this reality to the Committee. She stated, “[public] schools need sufficient resources to build systems of support for [low-income] families,” because children who are born into poverty disproportionately face socio-emotional, economic, and educational challenges.¹²⁶ For example, Kilver cited a well-known study by psychologists and education researchers Betty Hart and Todd Risley which found that by age four there is roughly a *30 million word gap* between children who are impoverished and children who are more

¹²⁴National Equity Atlas 2010-2014 Report on School Poverty in the U.S. Available here: http://nationalequityatlas.org/indicators/School_poverty

¹²⁵ National Equity Atlas, *School Poverty in the United States 2010-2014*, Website available here: http://nationalequityatlas.org/indicators/School_poverty

¹²⁶ Kilver Testimony, February 2016. P. 176, lines 1-2, P.173, lines 1-9

affluent.¹²⁷ Such research suggests that low-income students often start school needing additional and remedial supports.¹²⁸

In addition to lowering educational attainment, the intersection of poverty and race may also increase students' risk of suspension, expulsion, and ultimately juvenile incarceration. Panelist Lisa Thureau, Founder and Executive Director of Strategies for Youth, cited evidence "which found that using exclusionary methods such as presence of law enforcement, use of arrest, drug sniffing dogs, etc. is primarily in schools that serve youths of color and have low socio-economic status."¹²⁹ Thureau concluded that "this is often motivated by the perception of the need for security which does not correlate with the actual risk and in many ways reflect racial and elitist stereotypes."¹³⁰ In concurrence, Kenneth Allen, Vice-Chairman of the Indiana Commission on the Social Status of Black Males, articulated the relationship between poverty, low education attainment rates, high suspension/expulsion rates, high unemployment, and high incarceration rates among Black students, particularly males in the state of Indiana. He stated, "72% of black children are considered low income, approximately 83% of Indiana's black fourth graders score below reading proficiency, Indiana ranks as one of the 10 worst states in terms of black males' four-year high school graduation rates (51%), and suspension and expulsion rates for black males is more than three times the rate of our white males."¹³¹ "In conclusion," Allen noted, attention must be given to, 1) the impact of poverty on struggling family systems and dynamics, 2) to "school readiness, early literacy, and attendance," and 3) to exclusionary discipline policies that lead to negative outcomes such as unemployment and incarceration.¹³²

In sum, existing research suggests that poverty disproportionately impacts the physical, social, emotional, and educational needs of low-income students. Students who happen to be born in impoverished neighborhoods often face overwhelming odds regarding positive educational outcomes. They overwhelmingly encounter family disruption,¹³³ attend under-resourced schools,

¹²⁷ Hart & Risley, *Meaningful Differences in the Everyday Experience of Young American Children*, 1995. Synopsis available here: <http://products.brookespublishing.com/Meaningful-Differences-in-the-Everyday-Experience-of-Young-American-Children-P14.aspx>

¹²⁸ Kilver Testimony, February 2016. P. 174, lines 11-14

¹²⁹ Thureau Testimony, Web Hearing. January 2016, P. 13 lines 9-13

¹³⁰ Ibid. P. 13, lines 9-13

¹³¹ Allen Testimony, February 2016, P. 134-35 lines 1-4, 16-24, 11-15.

¹³² Ibid 135, lines 16-22

¹³³ A term used by Kenneth Allen during Testimony. February 2016, P. 133, lines 20-22

and lack the nutrition necessary to learn in the classroom setting.¹³⁴ They are also overwhelmingly children of color.¹³⁵

D. School Policies

1. Zero-tolerance and Exclusionary Discipline

The American Psychological Association defines the term “zero-tolerance” as policies that “mandate the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circumstances, or situational context.”¹³⁶ The popularization of such policies “grew out of state and federal drug enforcement policies in the 1980s,” and reflects the “tough-on-crime” rhetoric that had permeated the social and political discourse at the time.¹³⁷ According to a 2013 youth justice brief of the Vera Institute, over time, zero-tolerance policies were expanded, reflecting the *modus operandi* of police departments across the country.¹³⁸ A number of recent studies have sought to demonstrate the impact of zero tolerance policies.

In its current investigation of the Baltimore Police department, the U.S. Department of Justice underscored the damaging effects of zero-tolerance policies on community residents, particularly African-Americans. The final 2016 report stressed that the police department’s “pattern of constitutional violations [which] stem in part from its zero-tolerance enforcement strategy. [This] strategy prioritized attempts to suppress crime by regularly stopping and searching pedestrians and arresting them on any available charges, including discretionary misdemeanor offenses.”¹³⁹ As an ineffective policing strategy, the Department of Justice noted that zero-tolerance has caused the police department to have a “fractured relationship” with certain Baltimore communities: “Some community members believe that the Department operates as if there are

¹³⁴ Kilver Testimony. February 2016. P. 174, lines 14-18

¹³⁵ Allen Testimony,

¹³⁶ American Psychological Association: *Are Zero Tolerance Policies Effective in the Schools?*, December 2008. P.852. Available here: <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

¹³⁷ Skiba & Peterson, *The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?* January 1999. P. 1. Available here: http://curry.virginia.edu/uploads/resourceLibrary/dark_zero_tolerance.pdf

¹³⁸ Vera Institute of Justice: Center on Youth Justice. Issue Brief December 2013. P. 1

¹³⁹ U.S. Department of Justice Civil Rights Division: Investigation of the Baltimore City Police Department. August 2016. P. 24 Available here: <https://www.justice.gov/opa/file/883366/download>

“two Baltimores” in which the affluent sections of the City receive better services than its impoverished and minority neighborhoods.”¹⁴⁰

Zero tolerance policies have had a similar effect on the public education system. According to research published in the New York Law School Law Review, by the 1990s many school districts across the country had adopted zero tolerance policies “in response to a widespread perception that school violence was increasing.”¹⁴¹ In 1994, Congress mandated harsher consequences—namely exclusionary forms of discipline such as out-of-school suspension and expulsion—for both major and minor infractions.¹⁴² The underlying assumption was that removing students who engaged in any form of disruptive behavior would deter other students from disruption, thereby leading to a more positive school culture and climate.¹⁴³ Unfortunately, as Dr. Skiba mentioned during his testimony, research suggests that suspension and expulsion achieve the exact opposite effect, “Studies have found that schools with higher rates of suspension and expulsion have a poorer school climate with less holding capability for students.”¹⁴⁴ A 2008 report released by the American Psychological Association on the effectiveness of zero tolerance policies in schools revealed that, “rather than reducing the likelihood of disruption, school suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended.”¹⁴⁵

According to a 2010 report published by the New York Law School Review, a zero tolerance approach to school discipline has “raised civil rights concerns due to strong and consistent evidence that students of color are over-represented among those who are disciplined. [The] increased use of zero tolerance is directly responsible for increasing racial and ethnic disparities in school discipline.”¹⁴⁶ As Jaunae Hanger, of the Children’s Policy and Law Initiative of Indiana

¹⁴⁰ Ibid, P.10

¹⁴¹ Skiba, Eckes & Brown, African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy. New York Law School Review Volume 54 2009-10. P. 1072 Available here: <http://www.indiana.edu/~equity/docs/Skiba%20et%20al%2054%204.pdf>

¹⁴² In 1994 Congress passed the Gun-Free Schools Act mandating zero-tolerance policies nationally.

¹⁴³ American Psychological Association: Are Zero Tolerance Policies Effective in the Schools?, December 2008. P. 852.

¹⁴⁴ Skiba Testimony. February 2016. P. 14, lines 1-4

¹⁴⁵ American Psychological Association: Are Zero Tolerance Policies Effective in the Schools?, December 2008. P. 854.

¹⁴⁶ Skiba, Eckes & Brown, African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy. Volume 54 2009-10. P. 1074. Available here: <http://www.indiana.edu/~equity/docs/Skiba%20et%20al%2054%204.pdf>

testified, this is largely due to the fact that zero tolerance policies encourage the use of suspensions and expulsions for subjective behaviors.¹⁴⁷ In 2012, U.S. Senator Dick Durbin (D-IL), Chairman of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, declared during a hearing held a hearing on the school-to-prison pipeline:

For many young people, our schools are increasingly a gateway to the criminal justice system. This phenomenon is a consequence of a culture of zero tolerance that is widespread in our schools and is depriving many children of their fundamental right to an education. The current system puts kids on a path into the adult justice system for minor infractions. [We need] reforms to better discipline our students without forcing them out of the classroom and into a courtroom.¹⁴⁸

The hearing was the first-ever Congressional inquiry into the school-to-prison pipeline, and testimony consistently highlighted the relationship between zero tolerance policies in the public school system and the school-to-prison pipeline. Similarly, four years later during the present inquiry, testimony in Indiana suggested that exclusionary forms of school discipline, such as out-of-school suspension and expulsion, lead to short and long-term negative outcomes such as an increase in juvenile detention and youth involvement in the criminal justice system. Panelists noted that these outcomes “fall far more heavily on historically disadvantaged groups, especially African American students.”¹⁴⁹

2. *Suspension and Expulsion*

In addition to demonstrating a negative impact on school culture in general, research suggests that as a part of zero tolerance policies, suspension and expulsion specifically are directly related to future involvement in the juvenile justice system.”¹⁵⁰ During testimony Dr. Skiba articulated the linkage between the racially disproportionate discipline patterns in education and the creation of what is deemed the “school-to-prison pipeline.”

Students who are suspended are more likely to become academically disengaged, and there is emerging data that [shows] schools that suspend more students have lower scores on accountability tests and achievement tests. Those things obviously are more likely to lead to higher rates of dropouts and the Justice Center, [and] the Council of State Governments found that students who were suspended are five times more likely to drop out of school...and are more likely to be in contact with the juvenile justice system.

¹⁴⁷ Hanger Testimony, February 2016, P. 89, lines 13-19

¹⁴⁸ Press Release Available at: <http://www.durbin.senate.gov/newsroom/press-releases/durbin-holds-hearing-on-ending-the-school-to-prison-pipeline>

¹⁴⁹ Lichtenstein Testimony, February 2016, P. 28 lines 1-5

¹⁵⁰ Skiba, Eckes & Brown, African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy, New York Law School Review, Vol. 54. 2009-10. P. 1077.

Altogether, this research says that suspension and expulsion is in fact a risk factor in its own right for involvement in a variety of short- and long-term [negative] outcomes.

Likewise, Dr. Tracey Shollenberger, of Harvard University's Department of Sociology, and Research Associate at the Urban Institute's Justice Policy Center, examined "the prevalence and intensity of suspension among nationally representative samples of white, black, and Hispanic youth attending secondary school during the late 1990s."¹⁵¹ Dr. Shollenberger found that "suspension [was] highly correlated with negative educational and criminal justice outcomes (i.e. juvenile arrest) for roughly a decade after K-12,"¹⁵² grounding the core of the school-to-prison pipeline phenomenon in quantitative research. Through her work, she found that "among boys suspended for 10 total days or more, less than half had obtained a high school diploma by their late 20s, more than three in four had been arrested, and more than one in three had been sentenced to confinement in a correctional facility."¹⁵³ One of Dr. Shollenberger's conclusions states "while not all boys who were suspended from school experienced early sanctions from the juvenile or criminal justice systems, *few youth went on to become chronic offenders by their late 20s without first having been suspended from school.*" In short, since boys were more likely to be suspended, they were ultimately more at risk of being incarcerated. According to panelists, one reason why exclusionary discipline is so highly correlated with the juvenile justice system is because of the damaging impact that it has on the psychological well-being of students of color, particularly African American males. Dr. Skiba noted, "As suspensions pile up students begin to lose their identification with school, and see that anti-social groups on the street [are] a source of identification, which becomes a direct route to contact with the juvenile justice system."¹⁵⁴ Dr.

¹⁵¹ Shollenberger, Tracey. *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth 1997*. May 2013. P.2 Available here: https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/racial-disparities-in-school-suspension-and-subsequent-outcomes-evidence-from-the-national-longitudinal-survey-of-youth-1997/Shollenberger_racial-disparities-suspension-draft.pdf

¹⁵² Shollenberger, Tracey. *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth 1997*. May 2013. P.2 Available here: https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/racial-disparities-in-school-suspension-and-subsequent-outcomes-evidence-from-the-national-longitudinal-survey-of-youth-1997/Shollenberger_racial-disparities-suspension-draft.pdf

¹⁵³ Shollenberger, Tracey. *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth 1997*. May 2013. P.2 Available here: https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/racial-disparities-in-school-suspension-and-subsequent-outcomes-evidence-from-the-national-longitudinal-survey-of-youth-1997/Shollenberger_racial-disparities-suspension-draft.pdf

¹⁵⁴ Skiba Testimony. February 2016. P. 48, lines 1-7, Huff Testimony, February 2016. P. 179, lines 12-15

Marvin Lynn proposed solutions for the state of Indiana during testimony. He stated [there is] a “need for the state legislature to create a policy environment that is supportive of schools broadly, but looks at school climate that enhances the support and development of” those students that are disproportionately impacted by zero tolerance policies: African-American males.¹⁵⁵

3. *Non-traditional Education and the Pipeline*

Along with out-of-school suspension and expulsion, the Committee heard testimony about a number of alternative forms of education which may have the effect of alienating children from school. These include alternative education provided in juvenile detention facilities, alternative disciplinary schools, and inadequately supervised or supported homeschooling. While these options may provide alternative education for students who struggle academically and behaviorally in traditional schools, several panelists expressed concern about how they may feed the school-to-prison pipeline.

Juvenile Detention. Susan Lockwood, the Director of Juvenile Education for the Indiana Department of Corrections (IDOC), gave testimony regarding the impact of exclusionary discipline policies on her work with youth receiving educational services while serving time in juvenile detention. Lockwood stated that the juveniles in her care are severely behind academically and “haven’t been to school, or have dropped out of school.”¹⁵⁶ She added, “We do our best to try and help them catch-up, but we can’t make up all of those years not being engaged in school, or when they come to us behind, we do what we can but we can’t totally close the gap.”¹⁵⁷ The grim educational prospects for youth who end up in juvenile detention centers was also reflected in the testimony of Patricia Howey, a special education advocate, who noted, “Once a child is in the school-to-prison-pipeline, they rarely come out of it.”¹⁵⁸

Alternative Schools. Sheila Huff, a Principal and longtime educator in Evansville, IN, gave testimony to the Committee which highlighted the nature of alternative disciplinary schools in the state. As part of the Evansville Vanderburgh School Corporation (EVSC), Huff stressed the successes that her school, Bosse High, had with decreasing the number of suspensions and expulsions, particularly for African American students.¹⁵⁹ However, Ms. Huff, who

¹⁵⁵ Lynn Testimony, February 2016. P. 44, lines 10-15

¹⁵⁶ Lockwood Testimony. February 2016. P. 138, lines 4-9

¹⁵⁷ Lockwood Testimony. February 2016. P. 138, lines 9-14

¹⁵⁸ Howey Testimony, February 2016. P. 68, lines 20-24

¹⁵⁹ Huff Testimony, February 2016. P. 178, lines 23-25

acknowledged that the EVSC “has alternative schools that children are moved to,” also stressed the unfortunate reality that many of the alternative schools are currently not “meeting the needs of kids.”¹⁶⁰ While alternative schools give students who struggle academically and behaviorally the opportunity to graduate, Huff stated that the corporation, and the state, has “some work to do” with regard to providing educational opportunities that are on par with traditional schools.¹⁶¹

Homeschooling. Homeschooling may serve as an effective alternative education strategy for youth facing difficulty in the traditional school setting. However, the Committee heard testimony indicating concern about the lack of a homeschooling statute in the State of Indiana.¹⁶² Some testimony suggested that this lack of regulation may incentivize principals to inappropriately offer homeschooling as an “alternative” to expulsion—in order to lower the number of expulsions recorded on their school’s records.¹⁶³ Diana Daniels, the Executive Director of the National Council on Educating Black Children, cited a number of interviews with three Indiana principals who disclosed instances where they had met with the parents of struggling children and recommended that they transfer into homeschooling or risk expulsion.¹⁶⁴ After a student transfer to “homeschool” however, Ms. Daniels noted that there is currently no way to verify whether or not these children are being adequately educated.¹⁶⁵ Ms. Daniels raised concern that in many cases, the child may not receive adequate education or supervision at home, and thus may instead end up “in the streets.”¹⁶⁶ Ann Wilkins, the Uniserv Director for the Indiana State Teachers Association, gave testimony stating that “suspended and expelled children are often left unsupervised and without constructive activities while they are out of school.”¹⁶⁷ These children are much more likely to get into legal trouble, and are “easily targeted and put into the juvenile system.”¹⁶⁸ Daniels suggested that an investigation be done to find out how pervasive the practice of documenting student expulsions as “transfers” to “homeschool” in order to avoid a record of expulsion, without verifying the parent’s capacity for supervision and educational

¹⁶⁰ Huff Testimony, February 2016. P. 211, lines 1-5

¹⁶¹ Huff Testimony, February 2016. P. 211, lines 5-7

¹⁶² Daniels Testimony February 2016, P. 79 line 18 – p. 80 line 2

¹⁶³ Daniels Testimony February 2016, P. 80 line 3 – p. 84 line 4

¹⁶⁴ Daniels Testimony February 2016, P. 80, line 3 - p. 81 line 16; P. 93, line 21 - p. 94 line 15; p. 96 line 17 – p. 97 line 10

¹⁶⁵ Daniels Testimony February 2016, P. 93, line 21 - p. 94 line 15

¹⁶⁶ Daniels Testimony February 2016, P. 93, line 21 - p. 94 line 15; p. 98 line 5 – p. 99 line 1

¹⁶⁷ Wilkins Testimony. February 2016. P.229, lines 18-21

¹⁶⁸ Wilkins Testimony. February 2016. P.229, lines 22-24

support at home.¹⁶⁹ She also recommended training for parents of homeschool transfer children to help them understand their role and responsibility when they agree to homeschool their child.¹⁷⁰

In response to these concerns, the Committee received a number of written statements from various homeschool advocates. In a statement submitted on behalf of the Indiana Association of Home Educators, Ms. Debi Ketron wrote, “we reject the notion that government involvement in home education is beneficial to families. Home education must be a family decision without coercion from a governmental entity such as a public school”¹⁷¹ Staff Attorney Thomas Schmidt of the Homeschooling Legal Defense Association (HSLDA) noted that Indiana parents who do not send their children to public school are required to provide their children with “the instructional equivalent to that given in the public schools”¹⁷² from the age of seven until the child either graduates or reaches eighteen years of age. However, Mr. Schmidt also noted that the Indiana legislature has removed “all authority of the State Board of Education or the local school districts to define ‘equivalent education’ or to regulate it beyond that which is specifically authorized by statute.”¹⁷³ Upon the request of the superintendent, parents overseeing the home education of their children are required only to report the days of attendance of “each child who is subject to compulsory education” and the grade-level of each child in the homeschool.¹⁷⁴ Mr. Schmidt noted, “the intent of the legislature is that children in nonpublic schools be educated in an equivalent manner but that they have the freedom to use the curriculum that best suits the needs of their school. In the case of homeschool programs, the curriculum can be tailored to the needs of each individual student within the home.” Ms. Ketron wrote that “if current law was enforced, it would prevent the issues with the School to Prison Pipeline as it relates to home education.”¹⁷⁵

Additional testimony from other homeschool advocates expressed strong support for homeschooling as an appropriate and positive alternative to traditional education for some children. Mr. Augustus Tucker, President of the National Black Home Educators, cited research to suggest that controlling for gender and family socioeconomic status, Black homeschool

¹⁶⁹ Daniels Testimony February 2016, P. 83, lines 10-20

¹⁷⁰ Daniels Testimony February 2016, P. 83, lines 10-20

¹⁷¹ Indiana Association of Home Educators, Written testimony October 3, 2016

¹⁷² HSLDA Written testimony, [Appendix X](#); Indiana Code §20-33-2-28

¹⁷³ HSLDA Written testimony, [Appendix X](#); Indiana Code § 20-33-2-12(a)

¹⁷⁴ Indiana Code §20-33-2-21(b); §20-33-2-20(c); see HSLDA written testimony [Appendix X](#)

¹⁷⁵ Indiana Association of Home Educators, Written testimony October 3, 2016

students do better than their public school counterparts in reading, language, and math.¹⁷⁶ Still, as Ms. Ketron noted in her written statement, “home education works because the parents take responsibility for their children’s education.”¹⁷⁷ As such, the concern that some traditional school principals may be offering homeschooling as an alternative to expulsion for students whose parents are ill equipped to provide equivalent supervision and instruction at home remains problematic. Alison Slatter of the Indiana Association of Home Educators Action wrote, “[homeschooling] is not suitable for parents with out of control children who are being coerced by the government school system into homeschooling.”¹⁷⁸ Yet, presently in Indiana no mechanism currently exists to ensure that children attending non-accredited nonpublic schools such as home education are indeed receiving the “equivalent education” required by law.

4. *Police Presence in Schools*

In tandem with the advent of zero tolerance policies in schools, the School Resource Officer (SRO) program “gained prominence in the 1990s in response to various school shootings,” and the subsequent “tough on crime” era.¹⁷⁹ Panelist Dr. Lichtenstein noted that the mere presence of police officers in schools represents a “turn to the power of the law” to discipline and criminalize youth behavior.¹⁸⁰ As Amanda Merkwae, of the University of Michigan Law School, described in a recent report published by the Michigan Journal of Race and Law, “This criminalization encompasses students’ subjection to suspensions and expulsions under zero-tolerance policies; ‘scrutiny by armed police, dogs, or metal detectors’; and labeling ‘rule breaking and trouble-making students’ as criminals.”¹⁸¹

According to the U.S. Department of Education, Office of Civil Rights data, students of color and students with disabilities are more likely to receive referrals to police officers, and be arrested in school.¹⁸² During testimony panelist Lisa Thureau spoke of her experience

¹⁷⁶ Tucker written Testimony, National Black Home Educators (NBHE) [Appendix X](#)

¹⁷⁷ Indiana Association of Home Educators, Written testimony October 3, 2016

¹⁷⁸ Slatter written testimony, October 13, 2016 [Appendix X](#)

¹⁷⁹ Weiler, Spencer, Cray, & Martha. *Police at School: A Brief History and Current Status of School Resource Officers*. 2011. Abstract available here: <http://eric.ed.gov/?id=EJ925632>

¹⁸⁰ Lichtenstein Testimony, February 2016, P. 33, lines 14-21

¹⁸¹ University of Michigan Journal of Race and Law *Schooling the Police* . Vol.21 Issue 1. Fall 2015 P.155. Available here: <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1053&context=mjrl>

¹⁸² “Arrests and referrals to law enforcement, by race and disability status: While black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest. In comparison, white students represent 51% of enrollment,

interviewing students, educators, and school police. She found that in many cases educators become dependent on SROs to “manage discipline.” Due to the lack of training, guidance, and rules expressly articulating their role, many officers may resort to arresting disruptive students rather than deferring to more restorative approaches, or utilizing appropriate administrative penalties.¹⁸³ Thureau spoke extensively about the impact of the SRO program on exclusionary discipline policies, the school-to-prison pipeline, and their disparate impact on “youth of color, poor youth, and youth with special needs.”¹⁸⁴ Thureau suggested that officers often “presume defiance with youths of color and use that presumption to justify arrest.”¹⁸⁵ Thureau’s primary concern was that the presence of SROs may threaten the rights of “youth protected by the Civil Rights Act, the Equal Education Opportunities Act, and the Americans with Disabilities Act.”¹⁸⁶

Thureau described school arrest as “the great interrupter [because] it doubles the likelihood that youth will drop out of school,” and increases the risk of contact with the juvenile justice system.¹⁸⁷ The impact of bias and the intersection of race, sex, disability and socio-economic status help explain the disparities in school referrals to SROs and ultimately school arrests. Impoverished students are disproportionately exposed to “distress that comes with trauma and fear,” and many SROs don’t have the cultural sensitivity training to contextualize their “childlike and normative behaviors.”¹⁸⁸ In order to address this crucial segment of the school-to-prison pipeline, Thureau suggested that SRO roles be “clarified and delineated”, and that bias, cultural sensitivity, and trauma-informed training be provided to SROs.¹⁸⁹

41% of students referred to law enforcement, and 39% of those arrested. Students with disabilities (served by IDEA) represent a quarter of students arrested and referred to law enforcement, even though they are only 12% of the overall student population.” Available at: <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>

¹⁸³Thureau Testimony, January 2016, P.12, lines 32-41

¹⁸⁴ Thureau Testimony, January 2016, P.12, lines 26-28

¹⁸⁵ Thureau Testimony, January 2016, P.15, lines 8-11

¹⁸⁶Thureau Testimony, January 2016P. 12, lines 29-31

¹⁸⁷ Thureau Testimony, January 2016 P. 12, 31-35

¹⁸⁸ Thureau Testimony, January 2016. P. 15, lines 10-14

¹⁸⁹ Thureau Testimony, January 2016 P. 15, lines 1-17, Panelist Julie Smart also mentioned trauma-informed care/training as a suggestion for SROs, P. 147, lines 2-7

5. *High-Stakes Testing*

During testimony panelist Carol Craig, an educational consultant and Chair of the Advisory Committee for the Children's Policy and Law Initiative, suggested several recommendations to address the school-to-prison pipeline in Indiana.¹⁹⁰ Among them was a "review of the state's school accountability system," as Craig noted that there is an "over-emphasis on testing."¹⁹¹ Panelist Carol Kilver agreed, commenting that the state of Indiana has an "unnatural focus on standardized testing."¹⁹² Both statements represented a consensus among many panelists: high stakes testing contributes to the school-to-prison pipeline phenomenon in that it inhibits genuine teacher-student relationships, diverts attention and resources away from students' social-emotional needs, and may negatively impact school discipline procedures.¹⁹³

The Indiana Statewide Testing for Educational Progress (ISTEP) was mentioned as one of the sources of the problem.¹⁹⁴ According to the Indiana Department of Education, the purpose of ISTEP "is to measure student achievement in the subject areas of English/Language Arts, Mathematics, Science, and Social Studies," (3rd through 8th graders as well as 10th Graders). Unfortunately, students must take the test incrementally over several days. This fact is what led some panelists to conclude that too much classroom time is being spent on test preparation, and not on relationship-building and education.¹⁹⁵ Furthermore, as one panelist argued, "[these] standardized tests [don't fully engage students] and are often culturally irrelevant."¹⁹⁶

Panelist Colin Pier-Silver, the Title 1 ELA instructional coach at Navarre Intermediate Center, highlighted the importance of districts and schools developing systems of support for teachers and students. According to Pier-Silver an over-emphasis on high stakes testing shifts the school's focus away from "teaching children"—which encompasses genuine relationship-building—to

¹⁹⁰ Craig Testimony, February 2016. P. 293, lines 10-15

¹⁹¹ Craig Testimony, February 2016. P. 293, lines 16-17

¹⁹² Kilver Testimony. February 2016. P. 176, lines 6-7

¹⁹³ Kilver Testimony. February 2016. P. 176, lines 8-10, Jackson Testimony. P.201, lines 10-13, Wilkins Testimony. P. 232, lines 3-10, Garcia Testimony. P. 240, lines 21-23, Pier-Silver Testimony. P. 250, lines 21-24, and P. 251, lines 5-11, Craig Testimony. P. 293, lines 15-17.

¹⁹⁴ Kilver Testimony. February 2016. P. 176, lines 8-10, Jackson Testimony. P.201, lines 10-13, Wilkins Testimony. P. 232, lines 3-10, Garcia Testimony. P. 240, lines 21-23, Pier-Silver Testimony. P. 250, lines 21-24, and P. 251, lines 5-11, Craig Testimony. P. 293, lines 15-17.

¹⁹⁵ Wilkins Testimony, February 2016. P. 232, lines 3-6

¹⁹⁶ Garcia Testimony. February 2016. P. 241, lines 12-16

“teaching curriculum,” which creates a high-pressured environment for teachers, students, and school administrators.¹⁹⁷ Ann Wilkins of the Indiana State Teachers Association articulated the link between high stakes testing and school discipline. She said, “We have way too much emphasis on testing leaving teachers to miss out on too many teachable moments. These moments are what keep our students engaged in classes with fewer discipline issues.”¹⁹⁸

E. Alternative Policies and Solutions

1. Implicit Bias Training, Cultural Competency, and Teacher Diversity

A number of panelists offered general recommendations, alternative school policies and discipline strategies that could address the school-to-prison pipeline in the state of Indiana. Panelist Jaunae Hanger recommended more regulation around the use of suspensions/expulsions because, as noted in a previous section of the report, many schools suspend students for fairly subjective reasons, such as “defiance.”¹⁹⁹ Panelist Dr. Subini Annamma noted that such arbitrary implementation of exclusionary discipline reflects racial implicit bias because students of color are often disproportionately impacted. She stated, “We know that the disproportionate racial bias begins in the classroom.”²⁰⁰

Implicit Association Tests (IAT) reveals, “[a] consistent implicit association of African Americans with negative attitudes such as bad and unpleasant, and with negative stereotypes such as aggressive and lazy.”²⁰¹ Unfortunately, the classroom setting is not immune to such stereotypes and biases. Dr. Marvin Lynn noted that implicit and explicit racial bias in the classroom is a critical issue, “There is a real lack of cultural competence on the part of the average teacher. By and large teachers are not prepared to deal adequately with African American students, [particularly Black males].”²⁰² Dr. Annamma concluded that “teachers have to be trained to recognize their own implicit bias and who they find disruptive and [defiant] in

¹⁹⁷ Pier-Silver Testimony. February 2016, lines 251, lines 7-12

¹⁹⁸ Wilkins Testimony. February 2016. P. 232, lines 3-6

¹⁹⁹ Hanger Testimony, February 2016. P 89, lines 16-20

²⁰⁰ Annamma Testimony, January 2016. P.18, lines 19-22

²⁰¹ Discipline Disparities Research to Practice Collaborative, Can ‘De-biasing’ Strategies Help To Reduce Racial Disparities in School Discipline, March 2014, P.3. Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Implicit-Bias_031214.pdf

²⁰² Lynn Testimony, February 2016. P. 41, lines 17-19

the classroom.”²⁰³ Without an intervention, Drs. Annamma and Lynn recognized a perpetuation of the school-to-prison pipeline, because a teacher’s “branding” of a student as “defiant” and worthy of dismissal from the classroom setting often increases the student’s risk of suspension, expulsion, arrest, and juvenile justice involvement.²⁰⁴

According to the Discipline Disparities Research to Practice Collaborative, “Implicit bias research opens up a new avenue for interventions by helping us to better understand—and address—the split-second decision-making and judgments [by teachers] that can determine a student’s future trajectory.”²⁰⁵ For Dr. Subini and other panelists, implicit-bias and cultural-sensitivity training for teachers, as well as school staff/administrators, is a vital intervention that could increase teachers’ cultural competency, enhance school climate, and confront the root-cause of the school-to-prison pipeline: racial bias.

Dr. Lynn not only recommended cultural competency training for teachers, but also the hiring of more teachers of color, particularly Black males. He noted that the “diminishing presence of African American male teachers [likely] exacerbates the problem” of racial bias and exclusionary discipline.²⁰⁶ A recent study co-authored by political science Professor Don Haider-Markel, at the University of Kansas, provides empirical support for this recommendation. According to the study, “Increasing the proportion of minority teachers in a school enhances all students’ perceptions of school discipline fairness.”²⁰⁷ Also, a 2014 study on discipline disparities cited the need for cultural diversity among teachers to reflect the “rapidly increasing diversity in our nation’s student population.”²⁰⁸ The researchers concluded, “Unless pervasive

²⁰³ Annamma Testimony, January 2016. P.18, lines 19-22 Garcia Testimony, February 2016. P. 242, lines 20-22 Garcia Testimony, February 2016. P. 244, lines 13-16

²⁰⁴ Hanger Testimony, February 2016. P. 89, lines 8-9. Keyes Testimony. P. 127, lines 1-5

²⁰⁵ Discipline Disparities Research to Practice Collaborative, *Can ‘De-biasing’ Strategies Help To Reduce Racial Disparities in School Discipline*, March 2014, P.7. Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Implicit-Bias_031214.pdf

²⁰⁶ Lynn Testimony, February 2016. P. 41, lines 22-25

²⁰⁷ The University of Kansas, *Hiring more minority teachers in schools gives fairer perception of discipline*. Sept. 1, 2015 Available here: <https://news.ku.edu/2015/08/24/hiring-more-minority-teachers-schools-gives-fairer-perception-discipline>

²⁰⁸ Discipline Disparities Research to Practice Collaborative, *You Can’t Fix What You Don’t Look At: Acknowledging Race in Addressing Racial Discipline Disparities*, December 2014, P. 3-4. Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

negative stereotypes are explicitly engaged and challenged, educators can carry common stereotypes [and biases] with them [in the classroom]...shaping school discipline patterns.”²⁰⁹

Although implicit-bias training and cultural diversity among teachers and school staff could effectively address race bias and its impact on exclusionary discipline, the school-to-prison pipeline remains “a large social issue that demands a comprehensive response crossing over a myriad of systems.”²¹⁰ Along with the above-mentioned strategies and interventions, panelists recommended more teacher supports, resources and funding to combat the school-to-prison pipeline.

2. Other School Resources and Supports

Melissa Keyes, the legal director for the Indiana Protection Advocacy Services, proposed more supports and resources for educators. Keyes stated “Indiana schools are not prepared to handle the great variability in children’s educational, social, and behavioral needs. [They] need more support.”²¹¹ Much like Hanger and Annamma, Keyes advocated for more effective professional development and training for teachers. Ms. Hanger proposed more funding for teacher professional development, specifically for classroom management, noting that the lack of current resources for professional development is a hindrance to the ability of teachers to share best classroom management practices.²¹²

Student service personnel, such as school counselors, social workers, and psychologist are essential because, as Hanger noted, their presence provides an “alternative to criminalizing youth,” especially those youth most likely to be suspended, expelled, or referred to school law enforcement.²¹³ Funding for more student service personnel was another recommendation provided by panelists. Hanger noted, “The actual number of [these] personnel in our schools is way under what is recommended at the national level.”²¹⁴ Julie Smart, the State Coordinator at

²⁰⁹ Discipline Disparities Research to Practice Collaborative, *You Can’t Fix What You Don’t Look At: Acknowledging Race in Addressing Racial Discipline Disparities*, December 2014, P. 3-4. Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf

²¹⁰ Discipline Disparities Research to Practice Collaborative, *Can ‘De-biasing’ Strategies Help To Reduce Racial Disparities in School Discipline*, March 2014, P.7. Available here: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Implicit-Bias_031214.pdf

²¹¹ Keyes Testimony, February 2016. P. 129, lines 16-18

²¹² Hanger Testimony, February 2016. P. 90, lines 1-7

²¹³ Hanger Testimony, February 2016. P. 91, lines 4-5

²¹⁴ Hanger Testimony, February 2016. P. 90, lines 13-17

the McKinney-Vento Homeless Education Program for the Indiana Department of Education, also commented that more student service personnel are needed in schools in order to provide prevention and intervention resources when needed.²¹⁵ Smart's testimony called for district and school enforcement of the 1:250 student-to-counselor ratio currently mandated by the Illinois General Assembly.²¹⁶ She also noted that if funding for school service personnel is not prioritized in the near future, "the kinds of preventions and interventions needed [in schools]," will not occur, leading to a perpetuation of the school-to-prison pipeline.²¹⁷

3. Restorative Justice Intervention and Positive Behavioral & Social-Emotional Supports

According to researcher Sara Sun Beale, the restorative justice concept generally refers to the "process of bringing together the individuals who have been affected by an offense and having them agree on how to repair the harm caused by the crime," with the goal of restoring victims, offenders, and communities."²¹⁸ In essence, the "restorative justice model is often defined in opposition to the punitive, [or zero-tolerance] model."²¹⁹ Whereas zero tolerance stresses retribution and punishment, restorative justice stresses rehabilitation and restoration.²²⁰ Dr. Annamma suggested that schools and districts reframe their philosophical approach to discipline to reflect a restorative model and "see discipline as an opportunity for learning [and not punishment or exclusion]." ²²¹ She noted that teachers and school administrators need to be equipped with how to build relationships with students, because "the more trust the student feels

²¹⁵ Smart Testimony, February 2016. P. 147, lines 9-14

²¹⁶ Smart Testimony, February 2016. P. 156, lines 19-21

²¹⁷ Smart Testimony, February 2016. P. 156, lines 23-25

²¹⁸ Sara Sun Beale, Still Tough on Crime? Prospects for Restorative Justice in the United States, 2003 Utah Law Review 413-437 (2003) P. 418. Available here: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1631&context=faculty_scholarship

²¹⁹ Sara Sun Beale, Still Tough on Crime? Prospects for Restorative Justice in the United States, 2003 Utah Law Review 413-437 (2003) P. 418. Available here: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1631&context=faculty_scholarship

²²⁰ Sara Sun Beale, Still Tough on Crime? Prospects for Restorative Justice in the United States, 2003 Utah Law Review 413-437 (2003) P. 418. Available here: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1631&context=faculty_scholarship

²²¹ Annamma Testimony, February 2016. P. 11-12 lines 36-43

they have with the adult, the more likely they are to follow direction to do the basic things that need to be done.”²²²

Hanger agreed, and stated that school discipline codes [in Indiana and across the country currently] reflect a “zero tolerance approach that emphasizes referral out of the classroom and the use of suspensions.”²²³ She, along with several other panelists, recommended the restorative approach as an intervention to exclusionary school discipline; concluding that a “positive school discipline approach” which promotes “social-emotional learning strategies as opposed to just security measures” is needed to combat the school-to-prison pipeline.²²⁴ Other panelists, such as Monica Solinas-Saunders, cited Minnesota and Colorado as model states that had implemented restorative justice models. She proposed that the state of Indiana follow-suit, “piloting projects in districts [to] see if these programs might solve part of the [school-to-prison pipeline] problem.”²²⁵

Positive Behavioral Intervention and Support (PBIS) programs were also mentioned by panelists as a viable alternative to exclusionary discipline policies. According to the National Educational Association (NEA), “(PBIS) is a general term that refers to positive behavioral interventions and systems used to achieve important [student] behavior changes. PBIS [is designed to] improve the social culture and the behavioral climate of classrooms and schools which ultimately lead to enhanced academic performance.”²²⁶

Panelist Colin Pier-Silver noted, “In 2014, the South Bend Community School Corporation (SBCSC) in Indiana revised its code of conduct and office of discipline referral [pivoting] to the use of PBIS. [The] goal was to get to the root of why a student was misbehaving and guide them to make better choices.”²²⁷ Similarly, Cynthia Jackson talked about the changes that the Indianapolis Public School system initiated after its review of the detrimental discipline practices and policies which were biased against African-American youth and students with disabilities.²²⁸

²²² Annamma Testimony, January 2016. P.18, lines 23-25

²²³ Hanger Testimony, February 2016. P. 89, lines 8-9

²²⁴ Hanger Testimony, February 2016. P. 89, lines 8-9

²²⁵ Solinas-Saunders Testimony. February 2016. P. 24, lines 23-24

²²⁶ National Educational Association (NEA) NEA Education Policy and Practice Department. *An NEA Policy Brief*, 2014. P.1. Available here: https://www.nea.org/assets/docs/PB41A-Positive_Behavioral_Interventions-Final.pdf

²²⁷ Pier-Silver Testimony, February 2016. P. 245, lines 20-25

²²⁸ Jackson Testimony, February 2016. P. 196, lines 5-8

Jackson stated, “Our students had been trained [to expect] suspension if they made any error. [In order to] change their hearts, minds, and [expectations], we had to change the code of conduct, [and adopt] the paradigm that discipline is instruction, not punishment.”²²⁹ PBIS, as well as, “social emotional learning and tiered systems of support” were implemented and consequently, Jackson cited a “30% reduction in suspensions [and a significant] reduction in expulsions and arrests.”²³⁰ Jackson concluded by making an appeal to districts across the state of Indiana, “A Restorative practice, and social-emotional learning,” she said, “is essential because we know that not all students come prepared for school *to be students*. They do not have the skills for problem solving, and [many] do not have the skills of attention and self-control, so it is essential that this be a cornerstone of our education today.”²³¹

Panelist Ann Wilkins also cited PBIS as an intervention and alternative “to help keep children in the classroom, [and out of juvenile detention centers].”²³² Unfortunately, as Wilkins noted, “the professional development on PBIS has been limited [due to cuts in funding] and therefore administrators and teachers are not able to implement it properly.”²³³ Since “inconsistent support has resulted in inconsistent implementation,” both Pier-Silver and Wilkins called for more funding from the state to increase PBIS programs and training across the state of Indiana.²³⁴

4. Economic Investment and Prioritization

The Committee recognizes that instituting additional training and supports for students, families, and staff in schools—particularly in under-resourced communities—is a financial challenge in today’s political and economic context. However, the Committee finds it important to note that Policies that needlessly funnel youth into the criminal justice system impose significant immediate and long-term costs on residents of the State. The Justice Policy Institute reported in a recent study that Indiana taxpayers pay \$212.13 per day, or \$77,427.00 per year, to confine a single young person.²³⁵ This is more than what it would cost to pay tuition, fees, room and board

²²⁹ Jackson Testimony, February 2016. P. 198-9, lines 12-16, 1-5

²³⁰ Jackson Testimony, February 2016. P. 199-200, lines 23-25 & lines 1-3 respectively

²³¹ Jackson Testimony, February 2016. P. 201, lines 4-9

²³² Wilkins Testimony, February 2016. P. 231, lines 14-17

²³³ Wilkins Testimony, February 2016. P. 231, lines 18-21

²³⁴ Pier-Silver Testimony, February 2016. P. 247, lines 20-22

²³⁵ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 11 (Dec. 2014).

at Harvard for a full year.²³⁶ The direct and immediate costs paid for confinement pale in comparison to the long-term costs that arise as a result of the confinement. There are at least five additional long-term costs that should be considered.

1. Costs of recidivism.

Several studies show there is a strong positive relationship between youth incarceration and recidivism.²³⁷ A report published in the Journal of Qualitative Criminology found that youth who were incarcerated as a juvenile were roughly 20% more likely to commit additional crimes than youth who were arrested but not incarcerated.²³⁸ Similarly, “a report by Youth Advocate Programs found that more than eight out of 10 youth in an alternative-to-incarceration program remained arrest free, and nine out of 10 were at home after completing their community-based program, at a fraction of what it would cost to confine these youth.”²³⁹ The Justice Policy Institute’s economic analysis found that the cost of recidivism in the United States could be as high as \$7 billion per year, factoring in the costs to individuals who have been harmed by the additional crime, and the costs of further arrests, prosecution, court proceedings and confinement.²⁴⁰

2. Lost future earnings of confined youth

Studies show that children embroiled in the criminal justice system are less likely to graduate from high school.²⁴¹ Individuals who do not graduate from high school earn less than those who did, and are “significantly less likely” to become employed at a full-time, stable job, “or one that

²³⁶ <https://college.harvard.edu/financial-aid/how-aid-works/cost-attendance>.

²³⁷ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 22 (Dec. 2014).

²³⁸ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 21 (Dec. 2014).

²³⁹ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 7 (Dec. 2014).

²⁴⁰ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 26 (Dec. 2014).

²⁴¹ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 28 (Dec. 2014).

pays benefits.”²⁴² Indeed, individuals who do not graduate high school earn approximately \$630,000 less throughout their lifetime.²⁴³ In a national study, the Justice Policy Institute found that “between \$4 billion and nearly \$8 billion is lost [annually] when young person[s] are confined by the courts.”²⁴⁴

3. Lost tax revenue

Lost earnings affect not only the confined individual, but also the State of Indiana and U.S. economy. According to the Justice Policy Institute, U.S. “taxpayers and the public lose between \$2 billion and nearly \$4 billion in future tax revenue as a result of the impact of confinement on a young person’s ability to earn a living.”²⁴⁵

4. Costs of additional medical spending

According to a 2010 CDC report, educational attainment impacts an individual’s overall health.²⁴⁶ A person’s level of education was found to be inversely associated with obesity,²⁴⁷ heart disease, hypertension, stroke,²⁴⁸ emphysema or chronic bronchitis,²⁴⁹ diabetes, ulcers, liver disease, kidney disease, chronic joint symptoms,²⁵⁰ absence of natural teeth,²⁵¹ mental health

²⁴² Cecilia Elena Rouse, Member, Council of Econ. Advisors, Testimony before the Subcommittee on Children and Families & Committee on Health, Education, Labor and Pensions: The State of the American Child: The Impact of Federal Policies on Children, 4 (July 29, 2010), available at <https://www.whitehouse.gov/files/documents/20100729-rouse-testimony2.pdf>.

²⁴³ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 28 (Dec. 2014).

²⁴⁴ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 26 (Dec. 2014).

²⁴⁵ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 31-32 (Dec. 2014).

²⁴⁶ CDC, *Summary Health Statistics for U.S. Adults: National Health Interview Survey, 2009*, 10 VITAL & HEALTH STATISTICS 249, 10, 73, 76 (2010), http://www.cdc.gov/nchs/data/series/sr_10/sr10_249.pdf.

²⁴⁷ *Id.* at 12, 103, 106.

²⁴⁸ *Id.* at 5, 16, 19.

²⁴⁹ *Id.* at 5–6, 22, 25.

²⁵⁰ *Id.* at 6, 34, 37.

²⁵¹ *Id.* at 7, 46, 49.

issues (feelings of nervousness or worthlessness),²⁵² difficulty in physical activities,²⁵³ and migraines, back pain, neck pain, and jaw pain.²⁵⁴

In contrast, a person's level of education was found to be positively associated with a healthy weight,²⁵⁵ nonsmoking,²⁵⁶ "hav[ing] a usual place of health care and to consider a doctor's office or HMO as their usual place of health care,"²⁵⁷ more frequent visits to the dentist,²⁵⁸ and more testing for HIV.²⁵⁹ On average, each additional high school graduate saves the public health system \$40,500 over the individual's lifetime.²⁶⁰ The Justice Policy Institute estimates that U.S. taxpayers pay "anywhere from just under a billion to more than \$1.5 billion in increased Medicare and Medicaid costs when the previous confinement of a young person is accounted for among those individuals who rely on public assistance."²⁶¹

5. Cost of sexual assault

A 2012 Department of Justice report found that nearly 5% of youth in correctional facilities were sexually abused by other youth or by facility staff.²⁶² Victims of sexual assault can suffer severe physical and psychological harm that can hinder his or her ability to integrate into the

²⁵² *Id.* at 8, 52, 55, 58, 61.

²⁵³ *Id.* at 9, 70, 97, 100.

²⁵⁴ *Id.* at 7, 40, 43.

²⁵⁵ *Id.* at 12, 103, 106.

²⁵⁶ *Id.* at 85, 88.

²⁵⁷ *Id.* at 12, 109, 112.

²⁵⁸ *Id.* at 14, 127, 130.

²⁵⁹ *Id.* at 14, 133, 136.

²⁶⁰ Henry Levin, Clive Belfield et al., *The Costs and Benefits of an Excellent Education for All of America's Children*, COLUMBIA UNIV., 12 (Jan. 2007).

²⁶¹ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 32 (Dec. 2014).

²⁶² *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 32-33 (Dec. 2014).

community upon release from confinement.²⁶³ The Justice Policy Institute estimated the cost of sexual nationwide assault is between \$900 million and \$1.4 billion per year.²⁶⁴

In summary, the long-term costs for the confinement of young people can be summarized as follows:

Long-term costs	Low estimate	High estimate
Cost of recidivism	\$0	\$7,030,000,000
Lost future earnings of confined youth	\$4,070,000,000	\$7,600,000,000
Lost tax revenue	\$2,070,000,000	\$3,870,000,000
Additional medical spending	\$860,000,000	\$1,500,000,000
Costs of sexual assault	\$900,000,000	\$1,370,000,000
Total Costs	\$7,900,000,000	\$21,470,000,000 ²⁶⁵

The Justice Policy Institute report concludes that “the long-term costs of young people’s confinement may add up to an additional \$8 billion to \$21 billion each year, beyond the hundreds of thousands of dollars states and localities spend to confine young people.”²⁶⁶

If Indiana enacted policies that focused on increasing the rate of high school graduation, it would produce several million dollars in net benefits to Indiana over the lifetime of these students. The benefits would mainly be attributed to a reduction in crime and healthcare costs, and an increase in tax revenue.

²⁶³ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 34 (Dec. 2014).

²⁶⁴ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 35 (Dec. 2014).

²⁶⁵ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 36 (Dec. 2014).

²⁶⁶ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 1-2 (Dec. 2014).

IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²⁶⁷ The Indiana Advisory Committee heard testimony and reviewed data that clearly demonstrate disparities in the administration of school discipline between white students and students of color, particularly African American students. Boys, and students with disabilities are also at a significantly increased risk, especially where these identities and race intersect.

Experts have entitled the unfortunate routing of students from the educational system to the criminal justice system the “school-to-prison pipeline.” Suspension, expulsion, and referral to law enforcement are forms of discipline that may increase a student’s likelihood of future involvement with the juvenile justice system. A summary of findings relating to the Committee’s inquiry on this topic is provided below. Following these findings, the Committee proposes for the Commission’s consideration several recommendations that apply both to Indiana and to the nation as a whole.

A. Findings

1. *Implicit Bias*

- a) Implicit bias is defined as unconscious attitudes or beliefs held by an individual. Biases, and the stereotypes associated with them, could influence the often split-second disciplinary decisions administered by teachers or school administrators. Research shows that race, sex, and disability-based bias may contribute to persistent disparities in school discipline. The intersection of race, sex, and disability increases a student’s risk of being funneled in to the school-to-prison pipeline.
- b) The Committee heard testimony about how implicit bias affects response to behaviors of black students in comparison to the behavior of white students. While white students are more frequently disciplined for engaging in objective behaviors such as smoking or graffiti, black students are more often punished for objective behaviors such as class “disruption.”

²⁶⁷ 45 C.F.R. § 703.2

- c) Disparities in the incidence of exclusionary school discipline on the basis of race exist despite evidence that there is no significant difference in the behavior, or misbehavior, of black and white children.
- d) Panelists recommended that teachers, school officials, and School Resource Officers receive implicit-bias and trauma-informed training to mitigate the disparate effects of race, sex, and disability-based biases on students.

2. *Exclusionary Discipline Policies*

- a) Overly-punitive school disciplinary practices, such as expulsions, suspensions, and police officer referrals are vestiges of an era of zero-tolerance. These practices are commonly considered exclusionary discipline policies. They exclude students from their learning environments; increase the risk of juvenile justice system involvement, and ultimately the criminal justice system. Youth of color, particularly African Americans and youth with disabilities are disproportionately impacted.
- b) According to the U.S. Department of Education Office for Civil Rights data Black boys and girls have higher suspension rates than any of their peers, and students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspension as students without disabilities
- c) These practices could result in students struggling to find opportunities for achievement or a career path. Alternative schools and juvenile detention centers often do not provide an adequate alternative to traditional school settings. Consequently, students who have been suspended or expelled may have difficulty re-engaging with traditional education after even short periods of exclusion.

3. *Poverty/Economic Disparities*

- a) Children who are born into poverty disproportionately face social-emotional, economic, and educational challenges. Students who happen to be born in impoverished neighborhoods often face overwhelming odds regarding positive educational outcomes.
- b) Research shows that students of color are more likely to attend “high poverty schools” than their white peers. Panelists commented on the intersectionality of race and poverty. In Indiana, 72% of black children are considered low income. More structural supports and community-based resources are needed to address a growing population of young people of color who are or may be under-prepared to succeed.
- c) Attention must be given to the impact of poverty on struggling family systems and communities. Funding for school service personnel must be prioritized to enact the kind of prevention and intervention needed to combat the school-to-prison pipeline.

- d) Research indicates that investing in prevention based strategies, particularly in under resourced schools, may demonstrate long term net economic benefit when compared to the costs and long term economic impact of youth incarceration.

B. Recommendations

In response to these concerns, the Committee offers the following recommendations to the Commission:

- 1) The Commission should issues the following formal recommendations to the U.S. Department of Education:
 - a) The Department's Office of Civil Rights should establish a Review Committee to study the impact of school discipline policies on disparities in educational outcomes on the basis of race, color, national origin, and disability.
 - b) The Department should require that states impose mandatory reforms to disciplinary policies for schools that demonstrate significant disparities in disciplinary actions on the basis of race, color, sex or disability, according to the Office of Civil Rights, Civil Rights Data Collection. Such reforms may be based on the Department's 2014 Guiding Principles Resource Guide for Improving School Climate and Discipline.
 - c) The Department should require ongoing anti-bias, cultural competency, and trauma-informed training as a condition of receiving federal funding. School discipline interventions should not be neutral in nature, but should take in to consideration approaches that address race, color, national origin, and disability disparities.
 - d) The Department should require that states utilize best practices to include root cause analysis of disciplinary problems and employ the assistance of psychologists, social workers, and community organizations as opposed to law enforcement.
 - e) The Department should examine and recommend an expansion of evidence-based restorative justice and other alternative disciplinary models to reduce exclusionary discipline.
 - f) If law enforcement officers, or School Resource Officers (SROs) are to be working in schools, the Department should establish uniform licensing requirements to ensure that such officers are properly trained and equipped to respond in an age appropriate manner with children. Applicable training should include strategies for recognizing and mitigating implicit bias.
 - g) The Department should require that school districts engage in continuous, shared educational planning between alternative schools or juvenile detention facilities and a

child's homeschool, to ensure that students receive an education of similar quality and duration even if sent to an alternative school.

- h) The Department should withhold federal funding, in accordance with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 from institutions with policies and practices that have a disparate impact on the basis of race, color, national origin or disability.
- 2) The Commission should issue the following formal recommendations to the U.S. Department of Justice:
- a) The Department's Office of Juvenile Justice and Delinquency Prevention should examine educational outcomes and disparities on the basis of race, color, sex, and/or disability among youth who reside in juvenile detention and correctional facilities.
 - b) The Department should impose penalties to include filing a lawsuit against states for disparate treatment of students on the basis of race and disability. The recommendation comes as a result of overwhelming testimony and statistics establishing elements of a prima facie case of discrimination.
 - c) The Department should require mandatory, all-staff training on recognizing and mitigating the impact of implicit bias in its juvenile detention and correctional facilities.
- 3) The Commission should issue the following formal recommendation to the Indiana General Assembly:
- a) The Indiana General Assembly should adopt and pass appropriate legislation to implement the following recommendations provided in the November 1, 2014 Final Report of the Interim Study Committee on Education of the Indiana Legislative Services Agency.
 - i) The Committee recommends finding alternatives to expulsion and suspension for all students, with a special focus on truancy.
 - ii) The Committee recommends finding alternatives to expulsion and suspension for all students, with a special focus on eliminating disparities for minorities and other disadvantaged groups.

V. APPENDIX

DRAFT

Indiana Advisory Committee to the United States Commission on Civil Rights



U. S. Commission on Civil Rights Contact

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